

**CHAPTER 24  
CONTROVERSIES AND DISPUTES**

**Authority**

N.J.S.A. 18A:4-15, 18A:6-9, 18A:6-10 et seq., 18A:14-63.1 et seq., 18A:29-14, and 18A:60-1.

**Source and Effective Date**

R.1997 d.358, effective September 2, 1997.  
See: 29 N.J.R. 2745(a), 29 N.J.R. 3817(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 24, Controversies and Disputes, expires on September 2, 2002.

**Chapter Historical Note**

Chapter 24, Controversies and Disputes, was originally filed and became effective prior to September 1, 1969. Chapter 24 was amended by R.1973 d.232, effective August 20, 1973. See: 5 N.J.R. 332(a); R.1973 d.266, effective September 18, 1973. See: 5 N.J.R. 332(b); R.1976 d.308, effective October 6, 1976. See: 8 N.J.R. 101(d), 8 N.J.R. 505(b); and R.1981 d.265, effective July 9, 1981. See: 13 N.J.R. 190(a), 13 N.J.R. 397(b), 13 N.J.R. 481(a).

Pursuant to Executive Order No. 66(1978), Chapter 24 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 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, Controversies and Disputes, expired on July 11, 1997.

Chapter 24, Controversies and Disputes, was adopted as R.1997 d.358, effective September 2, 1997. See: Source and Effective Date.

**CHAPTER TABLE OF CONTENTS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

- 6:24-1.1 Definitions
- 6:24-1.2 Filing and service of petition
- 6:24-1.3 Format of petition
- 6:24-1.4 Filing and service of answer
- 6:24-1.5 Interim relief and/or stay
- 6:24-1.6 Amendment of petition and answer
- 6:24-1.7 Permission to intervene
- 6:24-1.8 Appearance pro se
- 6:24-1.9 Dismissal of petition
- 6:24-1.10 Hearing
- 6:24-1.11 Oaths
- 6:24-1.12 Subpoenas
- 6:24-1.13 Summary judgment
- 6:24-1.14 Written decision
- 6:24-1.15 Relaxing of rules
- 6:24-1.16 Awarding of interest

**SUBCHAPTER 2. DECLARATORY RULINGS**

- 6:24-2.1 Petition for declaratory rulings
- 6:24-2.2 Format of petition for declaratory rulings
- 6:24-2.3 Dissemination

**SUBCHAPTER 3. ORDER TO SHOW CAUSE**

- 6:24-3.1 Commissioner's order to show cause

**SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT**

- 6:24-4.1 Withholding salary increment

**SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT**

- 6:24-5.1 Filing of written charges and certificate of determination
- 6:24-5.2 Format of certificate of determination
- 6:24-5.3 Filing and service of answer to written charges
- 6:24-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education

**SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS**

- 6:24-6.1 Request for recount or investigation
- 6:24-6.2 Cost of recounts
- 6:24-6.3 Subpoenas
- 6:24-6.4 Continuation of recheck
- 6:24-6.5 Finding of error/relief

**SUBCHAPTER 7. (RESERVED)**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**6:24-1.1 Definitions**

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

“ALJ” means an administrative law judge from the Office of Administrative Law.

“Commissioner” as used in these rules, unless a different meaning appears from the context, shall mean the Commissioner of Education or his or her designee.

“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.

“Proof of service” means the provision of proof of the delivery of a paper by mail or in person to a party, person or entity to whom papers are required to be transmitted.

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

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

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

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

Added definition of “proof of service”.

## Case Notes

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

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

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

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

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

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

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

## 6:24-1.2 Filing and service of petition

(a) To initiate a contested case for the Commissioner's determination of a controversy or dispute arising under the school laws, a petitioner shall serve a copy of a petition upon each respondent. The petitioner then shall file proof of service and the original and two copies of the petition with the Commissioner c/o the Director of the Bureau of Controversies and Disputes, New Jersey Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625.

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

1. An acknowledgement of service signed by the attorney for the respondent or signed and acknowledged by the respondent or its agent;
2. A sworn affidavit of the person making service;
3. A certificate of service signed by the attorney making service; or
4. A receipt of certified mailing.

(c) The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

(d) When the State of New Jersey Department of Education or one of its agents is named as a party, proof of service to the Attorney General of the State of New Jersey is required.

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

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

Deleted old text and substituted new.

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

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

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

## Law Review and Journal Commentaries

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

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

## Case Notes

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

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

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

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

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

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

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

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

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

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

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

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

No enlargement or relaxation of 90-day limitation period for asserting tenure claim necessary where petitions were not timely filed after receiving notice. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572, 622 A.2d 237 (1993).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6:24-1.3 Format of petition

(a) The petition must include the name and address of each petitioner, the name and address of or a description sufficient to identify each party respondent, and a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws, and must be verified by oath. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen and should be presented in substantially the following form:

(NAME OF PETITIONER(S)), : BEFORE THE COMMISSIONER
PETITIONER(S), : OF EDUCATION OF NEW JERSEY

v.

(NAME OF RESPONDENT(S)), : PETITION
RESPONDENT(S). :

Petitioner, \_\_\_\_\_ residing at \_\_\_\_\_ hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent whose address (or other identification) is \_\_\_\_\_, pursuant to the authority of the commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

1. (Here set forth in appropriate paragraphs the specific allegation(s), and the facts supporting them, which constitute the basis of the controversy.) WHEREFORE, petitioner requests that (here set forth prayer for the relief desired).

Signature of petitioner or his or her attorney

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)

Sworn and subscribed to before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_

(Signature) \_\_\_\_\_

(b) Any party to a controversy or dispute before the Commissioner, who is a party to another action before any other administrative agency, arbitration proceeding or court involving the same or similar issue of fact or law, shall indicate the existence of such action or complaint within the petition of appeal or the answer to the Commissioner, as may be appropriate. Failure to so certify may be deemed to be sufficient cause for dismissal of the petition of appeal when, in the judgment of the Commissioner and/or the ALJ, such failure results in the duplication of administrative procedures for the resolution of a controversy or dispute.

(c) Whenever such duplicate filing is discovered, and after the filing of the answer by the respondent, the case will be transmitted to the OAL for initial determination of which agency, if any, has the predominant interest in the outcome of the case.

As amended, R.1981 d.265, effective July 9, 1981. See: 13 N.J.R. 190(a), 13 N.J.R. 397(b), 13 N.J.R. 481(a).

(a) and (b) added; existing text designated as (c). Amended by R.1986 d.157, effective May 5, 1986. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Recodified (c) to (a); (a) and (b) to (b) and (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 only.

6:24-1.4 Filing and service of answer

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, which shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition. Upon written application by a party the Commissioner may extend the time for answer. Such application must be received prior to the expiration of the 20 day period.

(b) Respondent(s) may not generally deny all the allegations, but shall make specific denials which meet the substance of designated allegations or paragraphs of the complaint.

(c) The Commissioner shall deem an affirmative defense to an allegation as also a denial of that allegation.

(d) The original and two copies of the answer shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner.

(e) Failure to answer within the 20 day period from receipt of service shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.

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).

Required the filing of two copies to conform to OAL rules and at (e) provided notice to respondents that failure to answer after a second notice shall result in notification that further failure to respond within 10 days will result in the Commissioner rendering summary decision.

**6:24-1.5 Interim relief and/or stay**

(a) Where the subject matter of the controversy is a particular course of action by a district board of education or any other party subject to the jurisdiction of the Commissioner, the petitioner may include, by way of separate motion, an application for emergent relief or a stay of that action pending the Commissioner's final decision in the contested case.

(b) Where a motion for a stay or emergent relief is filed, it shall be accompanied by a letter memorandum or brief which shall address the standard to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982).

(c) Any party opposing such an application shall so indicate as part of the answer to the petition filed pursuant to N.J.A.C. 6:24-1.4; however, upon review, the Commissioner may:

1. Act upon such application prior to the filing of an answer, provided a reasonable effort is made to give the opposing party an opportunity to be heard on that application;
2. Act upon such application upon receipt of the answer; or
3. Transmit the application to OAL for immediate hearing on the motion.

(d) The Commissioner may decide such application prior to any transmittal of the matter to the OAL for hearing. After transmittal to OAL, any motion for emergent relief shall be determined by the OAL. (See N.J.A.C. 1:1-12.6.)

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.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.

**Case Notes**

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).

**6:24-1.6 Amendment of petition and answer**

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 his or her petition, and any respondent may amend his or her answer, at any time and in any manner which the Commissioner deems fair and reasonable. Upon transmittal to the OAL, motions to amend a petition or answer shall be determined by the OAL. (See N.J.A.C. 1:1-6.2.)

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.

**6:24-1.7 Permission to intervene**

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 should be made to the OAL. Such requests are governed by N.J.A.C. 1:1-16.

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.

**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.

**6:24-1.8 Appearance pro se**

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 persons as set forth in N.J.A.C. 1:1-5.

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.

**6:24-1.9 Dismissal of petition**

At any time after the receipt of the answer and prior to transmittal of the pleadings to the OAL, the Commissioner, in his or her discretion, may dismiss the petition on the grounds that no sufficient cause for determination has been advanced, 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.

**Case Notes**

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.

**6:24-1.10 Hearing**

(a) Upon the filing of the petition and answer(s) in a contested case, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the case directly and individually or transmit the matter for hearing before the OAL. Should the Commissioner retain the matter, procedures relating to pre-hearing conferences shall be governed by the rules of the OAL. (See N.J.A.C. 1:1-13.1.)

(b) Upon transmittal to the OAL, the conduct of the proceedings shall be governed by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1.

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the Commissioner or the ALJ, whoever is hearing the case.

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.

**Case Notes**

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.

Petitioner is entitled to evidentiary hearing on question of whether state of mind was such as to render resignation from position involuntary, warranting relaxation of 90-day time-bar. *Brunnquell v. Bd. of Educ. of Scotch Plains-Fanwood*, 11 N.J.A.R. 499 (1987).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.11. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.19; good and sufficient reasons for adjournment include court appearances, counsel vacationing out of county, unavailability of witnesses and conflicting counsel schedules. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

**6:24-1.11 Oaths**

The Commissioner or the ALJ, whoever is hearing the case, shall have authority to administer oaths and affirmations, examine witnesses and receive evidence, issue subpoenas, rule upon offers of proof, take or cause depositions to be taken whenever the ends of justice would be served thereby, regulate the course of the hearing, and dispose of procedural requests or similar matters.

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 the ALJ, whoever is hearing the case,".

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

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

Upper case titles and deleted N.J.A.C. cite.

**6:24-1.12 Subpoenas**

Subpoenas requiring the appearance of persons or the production of documents may be issued at the discretion of the Commissioner or the ALJ, whoever is hearing the case, upon request of any party. (See also N.J.A.C. 1:1-11.1.)

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

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

Deleted text "Any witnesses summoned . . . evidence is requested."

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

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

**Case Notes**

Application of former regulation to class action. *Rivera v. Bd. of Ed., Perth Amboy, Middlesex Cty.*, 1974 S.L.D. 226.

**6:24-1.13 Summary judgment**

(a) Should the Commissioner determine to decide a motion for summary judgment prior to transmission to OAL such motion shall be subject to the following process:

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 Kacproicz, 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.

## SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS

### 6:24-6.1 Request for recount or investigation

(a) Request for recount of the ballots cast or for an investigation of the procedures at a school election shall be in compliance with N.J.S.A. 18A:14-63.1 et seq. and need not conform with N.J.A.C. 6:24-1.2 (Filing and service of petition). Such request shall be in letter form addressed to the Commissioner and shall set forth with particularity the grounds on which the election results are contested.

(b) Request for inquiry into alleged violations of statutorily prescribed election procedures, pursuant to N.J.S.A. 18A:14-63.12, shall be in writing to the Commissioner.

(c) Hearings inquiring into alleged violations of statutorily prescribed election procedures shall be conducted pursuant to N.J.A.C. 1:1 by the Commissioner or an ALJ.

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

Old (b)-(d) repealed and new (b)-(c) substituted.  
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.

#### Case Notes

Failure to demonstrate irregularities that thwarted will of electorate warranted dismissal of petition challenging school district election. Inquiry Into the Matter of the Annual School Election Held in the Ramapo Indian Hills Regional School District, 96 N.J.A.R.2d (EDU) 537.

School board election results unchanged after recount. In the Matter of the Asbury Park City School District Election, 96 N.J.A.R.2d (EDU) 30.

Unsuccessful candidate's action against school board; improper expenditure of funds and presentation of budget. Mercer v. Brick Township Board of Education, 94 N.J.A.R.2d (EDU) 368.

Challenge candidacy for school board based upon defective nominating papers; timeliness. *Rollins v. James P. Cardoneu*, 94 N.J.A.R. (EDU) 357.

Claim affecting outcome of school board election was not barred by limitations; however, candidate failed to prove that irregularities required invalidation. In the Matter of the Deal Borough School Election, 93 N.J.A.R.2d (EDU) 769.

Petition for an additional school board election polling place was properly submitted. *Schwieger v. East Windsor Regional Board of Education*, 93 N.J.A.R.2d (EDU) 327.

The Commissioner of Education was without jurisdiction to adjudicate question presented under Open Public Meetings Act. *Rovello v. Boyle*, 93 N.J.A.R.2d (EDU) 313.

**6:24-6.2 Cost of recounts**

Cost of recounts shall be in compliance with N.J.S.A. 18A:14-63.6 and 63.7.

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 substituted.

**6:24-6.3 Subpoenas**

In any school election recount initiated pursuant to this subchapter, the Commissioner shall have the power to subpoena necessary witnesses to testify and to produce books, papers, documents and other objects designated in the subpoena.

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

**6:24-6.4 Continuation of recheck**

In districts where election machines have been used, the Commissioner shall ascertain from the party or parties applying for a recount which voting machines shall be rechecked. In the event that it shall appear during the course of the recheck that there has been a sufficient change in the tally of the votes cast to alter the result of the election, any candidate who appears then to have been defeated, or, in the event of a question, proposition or referendum, the parties in interest who may be affected adversely, may, within five days of such changed result, apply to the Commissioner to continue the recheck on his or her behalf upon the same terms and conditions under which the original recheck was held.

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".  
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.

**6:24-6.5 Finding of error/relief**

Where the Commissioner finds as a result of a recount or an inquiry that an error has occurred which alters the result of the election or that irregularities have occurred sufficient

to influence the outcome, he or she shall order such relief as is appropriate.

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 changes only.

**Case Notes**

School bond referendum results were upheld despite alleged irregularities in voting procedures, where irregularities did not change outcome of referendum. In the Matter of the Special Election Held in the Hillsborough Township School District, 96 N.J.A.R.2d (EDU) 624.

School board member reprimanded for soliciting signatures of school employees on school property. *Dilzer v. Sweet*, 96 N.J.A.R.2d (EDU) 132.

Request for election inquiry dismissed after petitioner failed to timely prosecute his claims. In the Matter of the Toms River Regional School District Annual Election, 96 N.J.A.R.2d (EDU) 123.

School board's newsletter promoting new high school bond issue constituted improper advocacy. *Enterline v. Hillsborough Township Board of Education*, 96 N.J.A.R.2d (EDU) 114.

School board election upheld when alleged violations of election laws not shown to have affected outcome. In the Matter of the New Providence Borough Annual School Election, 96 N.J.A.R.2d (EDU) 10.

Portions of referendum newsletter by school board were corrected insofar as they were misleading and provided inaccurate information. *Magara and Herbert v. Wall Board of Education*, 95 N.J.A.R.2d (EDU) 532.

Alignment irregularities on ballots in school board election did not invalidate outcome when votes otherwise correctly processed. *Cooper v. Monroe Board of Education*, 95 N.J.A.R.2d (EDU) 508.

Announced results of balloting for members of school board were unchanged after recount. Matter of School Election in Freehold Township, 95 N.J.A.R.2d (EDU) 478.

Results of school board election were not altered by one-vote change in tally after recount. Matter of Long Branch School Election, 95 N.J.A.R.2d (EDU) 466.

Announced results of school board election were left unchanged after recount. Matter of Manalapan-Englishtown Election, 95 N.J.A.R.2d (EDU) 465.

Slight tally alterations on recount were not sufficient to change announced results of school board election. Matter of Union Township School Election, 95 N.J.A.R.2d (EDU) 274.

Announced results of school election were not changed by recount of absentee ballot tallies. Matter of Stafford School Election, 95 N.J.A.R.2d (EDU) 273.

Six additional votes received by one candidate as a result of recount were not sufficient to change announced results of school election. Matter of Princeton School Election, 95 N.J.A.R.2d (EDU) 272.

Announced results of balloting for three members of school board were not changed by recount. Matter of Lyndhurst School Election, 95 N.J.A.R.2d (EDU) 271.

Announced results of balloting for school board election were left unchanged by recheck of machine votes cast. Matter of Saddle Brook School Election, 95 N.J.A.R.2d (EDU) 252.

Defeat of General Fund question at annual school election was not otherwise affected by recount of machine ballots cast. Matter of Roselle Park School Election, 95 N.J.A.R.2d (EDU) 251.

Announced results of balloting for school board were left unchanged by absentee tallies on recount. Matter of Old Bridge School Election, 95 N.J.A.R.2d (EDU) 250.

Individuals originally announced as successful candidates at school board election were left unchanged as a result of absentee tallies on recount. Matter of Ewing School Election, 95 N.J.A.R.2d (EDU) 249.

Slight change in tally for one candidate as a result of recount did not affect outcome of school board election. Matter of Teaneck School Election, 95 N.J.A.R.2d (EDU) 248.

Negative balloting on General Fund question was not changed by recount of absentee votes. Matter of Piscataway School Election, 95 N.J.A.R.2d (EDU) 244.

Outcome of school board election was not affected by recount of absentee votes resulting in only a slight change in tallies. Matter of Mount Laurel School Election, 95 N.J.A.R.2d (EDU) 243.

Recount of balloting for school board election required a change in list of successful candidates in one instance. Matter of Little Ferry School Election, 95 N.J.A.R.2d (EDU) 242.

Results of balloting at annual school election were without change following recount and were accepted as originally announced. Matter of Annual School Election in Essex County, 95 N.J.A.R.2d (EDU) 234.

Voting irregularities did not require order setting aside annual school election in absence of evidence that will of voters was thwarted. Matter of Annual School Election in Atlantic City, 95 N.J.A.R.2d (EDU) 229.

Results of balloting, as announced at conclusion of school board election, remained unaltered after recount. Matter of Annual School Election in Toms River, 95 N.J.A.R.2d (EDU) 228.

Nominating petition for school election, not otherwise defective, is conclusively valid. Rollins v. Cardaneo, 95 N.J.A.R.2d (EDU) 104.

Election not set aside; malfunctioning voting machine. In the Matter of the Annual School Election Held in the Ridgefield Park Borough School District, 94 N.J.A.R.2d (EDU) 530.

Absentee ballot lacking postmark counted in school election. In the Matter of the Annual School Election Held in the Morris Hills Regional School District, 94 N.J.A.R.2d (EDU) 529.

Outcome of school election valid; recount. In the Matter of the Annual School Election Held in the Hoboken City School District, 94 N.J.A.R.2d (EDU) 528.

Board election and general fund proposition; recount of ballots. In the Matter of the Annual School Election Held in the Mahwah Township School District, Bergen County, 94 N.J.A.R.2d (EDU) 519.

Annual school election; unchanged upon recount. In the Matter of the Annual School Election Held in the School District of the Township of Willingboro, Burlington County, 94 N.J.A.R.2d (EDU) 519.

Annual school board election; recount of machine ballots. In the Matter of the Annual School Election Held in the Mount Laurel Township School District, Burlington County, 94 N.J.A.R.2d (EDU) 518.

Annual school election; recheck of election machines. In the Matter of the Annual School Election Held in the Middlesex County School Districts, 94 N.J.A.R.2d (EDU) 517.

Write-in ballots; candidates full name. In the Matter of the Annual School Election Held in the Oldmans Township School District, Salem County, 94 N.J.A.R.2d (EDU) 516.

Results unchanged; recount of ballots; school board election. In the Matter of the Annual School Election Held in the Morris Township School District, Morris County, 94 N.J.A.R.2d (EDU) 515.

Recount of votes for board membership. In the Matter of the Annual School Election Held in the School District of the Township of Mount Larvel, 94 N.J.A.R.2d (EDU) 440.

Recount of votes for board membership did not alter outcome. In the Matter of the Annual School Election Held in the School District of the Township of Willingboro, 94 N.J.A.R.2d (EDU) 440.

Recheck of election machines; school election. In the Matter of the Annual School Election Held in the School Districts of Middlesex County, 94 N.J.A.R.2d (EDU) 438.

Recount of votes; not alter outcome of election. In the Matter of the Annual School Election Held in the Pemberton Township School District, 94 N.J.A.R.2d (EDU) 435.

Recount of votes for board membership; not alter outcome. In the matter of Annual School Election Held in the Bridgewater-Raritan School District, 94 N.J.A.R.2d (EDU) 434.

Recount of votes for board membership; not change outcome. In the Matter of the Annual School Election Held in the Montville Township School District, 94 N.J.A.R.2d (EDU) 434.

Recount of votes for board membership. In the Matter of the Annual School Election Held in the City of Elizabeth School District, 94 N.J.A.R.2d (EDU) 433.

Absentee ballot had to be counted; no fraud evidenced. In the Matter of the Morris Hills Board of Education, 94 N.J.A.R.2d (EDU) 421.

Recount did not alter outcome of election for board membership. In the Matter of the Annual School Election Held in the West Paterson Borough School District, 94 N.J.A.R.2d (EDU) 420.

Recount of votes for board membership; no change. In the Matter of the Annual School Election Held in the Constituent District of Stafford Twp., 94 N.J.A.R.2d (EDU) 419.

Recount of votes for board membership; not alter outcome. In the Matter of the Annual School Election Held in Berkeley Township, 94 N.J.A.R.2d (EDU) 418.

Recount; board membership; tie broken. In the Matter of Annual Election Held in the Gibbsboro Borough School District, 94 N.J.A.R.2d (EDU) 417.

Recount of ballots cast for board membership. In the Matter of the Annual School Election Held in the School District of Garwood, 94 N.J.A.R.2d (EDU) 416.

Recount of ballots cast for General Fund proposition; no change. In the Matter of the Annual School Election Held in the School District of Garwood, 94 N.J.A.R.2d (EDU) 416.

Recount of ballots cast for board membership; no change. In the Matter of the Annual School Election Held in the Carlstadt East Rutherford School District, 94 N.J.A.R.2d (EDU) 415.

Recount of votes for board membership and General Fund proposition; did not alter outcome. In the Matter of Annual School Election Held in the Lower Camden County Regional School District, 94 N.J.A.R.2d (EDU) 414.

Recount of votes for General Fund proposition; no change. In the Matter of the Annual School Election Held in the Lawnside Borough School District, 94 N.J.A.R.2d (EDU) 413.

Recount of votes for General Fund proposition. In the Matter of the Annual School Election Held in the Cherry Hill School District, 94 N.J.A.R.2d (EDU) 413.

Recount of results; Board membership. In the Matter of the Annual School Election Held in the Frenchtown Borough School District, 94 N.J.A.R.2d (EDU) 412.

Tie-breaking absentee ballot was properly voided. In the Matter of the Annual School Election Held in the City of Cape May School District, 94 N.J.A.R.2d (EDU) 411.

Recount of ballots cast for Board membership and General Fund proposition; approval rather than disapproval for General Fund proposition. In the Matter of the Annual School Election Held in the Waterford Township School District, 94 N.J.A.R.2d (EDU) 410.

Recount of voting by machines; school election for General Fund proposition. In the Matter of the Annual School Election Held in the City of Passaic School District, 94 N.J.A.R.2d (EDU) 409.

Removal of elected member of school board; not a registered voter in the district. In the Matter of the Annual School Election Held in the School District of Old Bridge, 94 N.J.A.R.2d (EDU) 323.

Confusion of write-in voters did not invalidate election. In the Matter of the School Election Held in East Amwell Township, 93 N.J.A.R.2d (EDU) 878.

Alleged election irregularities were not shown to warrant new election. In Matter of Annual Newark School Board Election, 93 N.J.A.R.2d (EDU) 645.

Election irregularities were not shown to have thwarted will of people; no new election ordered. In Matter of Annual School Election Held in City of Egg Harbor, 93 N.J.A.R.2d (EDU) 635.

Board of education membership election recount; no change. In Matter of Special School Election Held in School District of Township of Edison, 93 N.J.A.R.2d (EDU) 611.

Board of education membership election recount; no change. In Matter of Annual School Election Held in Bridgewater-Raritan Regional School District, 93 N.J.A.R.2d (EDU) 611.

Election irregularity shown to have affected outcome of board of education election; new election. In Matter of Annual School Election Held in School District of Borough of Keansburg, 93 N.J.A.R.2d (EDU) 574.

Completion and certification of list of election board challengers; violation not warrant invalidating election. In Matter of School Election Held in School District of Borough of Fairview, 93 N.J.A.R.2d (EDU) 409.

Partisan political activity and board member acting as campaign manager; no election violation. In Matter of Annual School Election in School District of Township of Brick, 93 N.J.A.R.2d (EDU) 360.

Prospective candidate's use of his own signature on nominating petition; no emergent relief following rejection of petition. Darrow v. Board of Education of Borough of Brooklawn, 93 N.J.A.R.2d (EDU) 358.

School board election; no evidence that irregularities constituted fraud or interfered with election. Sickler v. Washington Borough School District, 93 N.J.A.R.2d (EDU) 341.

Execution of voter affidavits; no showing of effect on election outcome. In Matter of Special Election Held in Township of Millstone, 93 N.J.A.R.2d (EDU) 273.

Emergency placement for neurologically impaired child was not available absent evidence of irreparable harm. M.B. v. Manville, 93 N.J.A.R.2d (EDS) 233.

Public funds improperly used to promote political views and candidacy of incumbent school board members. Schettino v. Ridgely Board of Education, 93 N.J.A.R.2d (EDU) 224.

Special election held more than the required statutory 70 days after voters elected to change governance of school district would be approved. In the Matter of the Special Election of the Edison Township School District, 93 N.J.A.R.2d (EDU) 171.

New school board election not ordered; no proof of illegality of voting by challenged voters or of how they voted. In Matter of Annual School Election Held in School District of Borough of Laurel Springs, 92 N.J.A.R.2d (EDU) 658.

Removal by store of campaign sign; no violation. In Matter of Annual School Election held in Jackson Township School District, 92 N.J.A.R.2d (EDU) 617.

Election irregularities did not warrant new election. In Matter of Annual School Election Held in School District of Township of Willingboro, 92 N.J.A.R.2d (EDU) 564.

Voter difficulties; not set aside election. In Matter of Annual School Election Held in School District of Borough of Waldwick, 92 N.J.A.R.2d (EDU) 520.

Alleged election violations did not affect outcome of school board election. In Matter of Annual School Election in Mainland Regional School District, 92 N.J.A.R.2d (EDU) 514.

School board election recount; no change. In Matter of Special School Election Held in School District of Borough of Laurel Springs, 92 N.J.A.R.2d (EDU) 513.

School board election irregularities; not invalidate results. In Matter of Annual School Election Held in School District of Township of Hainesport, 92 N.J.A.R.2d (EDU) 504.

School board election; irregularities warranted new election. In Matter of Annual School Board Election Held in Township of Hamilton, 92 N.J.A.R.2d (EDU) 476.

Anonymous postcard; violation of school election campaigning statute. In Matter of Annual School Election Held in Toms River Regional School District, 92 N.J.A.R.2d (EDU) 446.

Improper election procedures followed for filling vacant seats on board of education; write in candidate not entitled to seat; special election required. In Matter of Annual School Election Held in School District of Mullica Township, 92 N.J.A.R.2d (EDU) 432.

Board of education election; recount showed no change. In Matter of Annual School Election Held in School District of Township of Piscataway, 92 N.J.A.R.2d (EDU) 391.

Recount did not change board of education election outcome. In matter of annual school election held in school district of Township of Maple Shade, 92 N.J.A.R.2d (EDU) 388.

Recount did not change board of education election outcome. In matter of annual school election held in school district of Township of Lakewood, 92 N.J.A.R.2d (EDU) 387.

Recount did not change board of education election outcome. In matter of annual school election held in constituent district of Stafford Township, 92 N.J.A.R.2d (EDU) 386.

Recount did not change board of education election outcome. In matter of annual school election held in school district of Township of Eagleswood, 92 N.J.A.R.2d (EDU) 386.

Recount did not change board of education election outcome. Title in matter of annual school election held in school district of Township of Brick, 92 N.J.A.R.2d (EDU) 385.

There was no violation of election law nor thwarting of will of the voters, so as to warrant invalidation of school election. Matter of Annual School Election, Borough of Wanaque, 91 N.J.A.R.2d 6 (EDU).

Unsuccessful candidate failed to prove election irregularities; no election invalidation. Matter of the Annual School Election, Lacey Tp., 91 N.J.A.R.2d 3 (EDU).

SUBCHAPTER 7. (RESERVED)

Subchapter Historical Note

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).