

Public utility ratemaking procedures, although quasi-legislative in origin, are conducted like quasi-judicial proceedings (cites former N.J.A.C. 1:1-6(a)3). Adjudicatory proceedings often involve disputed factual issues and require adversary proceeding for proper resolution (citing former N.J.A.C. 1:1-1.5(a)3). *Shapiro v. Albanese*, 194 N.J.Super. 418, 477 A.2d 352 (App.Div.1984).

Former N.J.A.C. 1:1-1.6 and 1.7 did not usurp the agency head's authority to decide what constitutes a contested case. In Re: Uniform Administrative Procedure Rules, 90 N.J. 85, 447 A.2d 151 (1982).

Rate schedule approval hearing, as a non-adjudicative proceeding, does not require a plenary hearing. *New Jersey Builders Assn. v. Sheeran*, 168 N.J.Super. 237, 402 A.2d 956 (App.Div.1979), certification denied 81 N.J. 293, 405 A.2d 837 (1979).

Order of remand signed by assistant director; valid. *O.F. v. Hudson County Welfare Agency*, 92 N.J.A.R.2d (DEA) 57.

### SUBCHAPTER 3. COMMENCEMENT OF CONTESTED CASES; JURISDICTION OF THE OFFICE OF ADMINISTRATIVE LAW

#### 1:1-3.1 Commencement of contested cases in the State agencies

A contested case shall be commenced in the State agency with appropriate subject matter jurisdiction. A contested case may be commenced by the agency itself or by an individual or entity as provided in the rules and regulations of the agency.

#### 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*, 42 F.3d 149, rehearing and rehearing in banc denied.

#### 1:1-3.2 Jurisdiction of the Office of Administrative Law

(a) The Office of Administrative Law shall acquire jurisdiction over a matter only after it has been determined to be a contested case by an agency head and has been filed with the Office of Administrative Law or as otherwise authorized by law, except as provided by N.J.A.C. 1:1-17. The Office of Administrative Law shall not receive, hear or consider any pleadings, motion papers, or documents of any kind relating to any matter until it has acquired jurisdiction over that matter, except as provided by N.J.A.C. 1:1-17.

(b) When the Office of Administrative Law acquires jurisdiction over a matter that arises from a State agency's rejection of a party's application, and at the hearing the party offers proofs that were not previously considered by the agency, the judge may either allow the party to amend the application to add new contentions, claims or defenses or, if considerations of expediency and efficiency so require, the judge shall order the matter returned to the State agency. If the matter is returned to the agency and thereafter transmitted for hearing, the agency's response to any **new** contentions, claims or defenses shall be attached to the transmittal form required by N.J.A.C. 1:1-8.2.

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of review:

1. Disqualification of a particular judge due to interest or any other reason which would preclude a fair and unbiased hearing, pursuant to N.J.A.C. 1:1-14.12;
2. Appearances of non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.4;
3. Imposition of conditions and limitations upon non-lawyer representatives, pursuant to N.J.A.C. 1:1-5.5;
4. Sanctions under N.J.A.C. 1:1-14.4 consisting of the assessment of costs, expenses, or fines;
5. Disqualification of attorneys, pursuant to N.J.A.C. 1:1-5.3; and
6. Establishment of a hearing location pursuant to N.J.A.C. 1:1-9.1(b).

Amended by R.1991 d.34, effective January 22, 1991.  
See: 22 N.J.R. 3278(a), 23 N.J.R. 194(a).

Added (c)6.  
Amended by R.1991 d.279, effective June 3, 1991 (operative July 1, 1991).

See: 23 N.J.R. 639(a), 23 N.J.R. 1786(a).  
In (c)4: revised N.J.A.C. citation.  
Amended by R.1996 d.133, effective March 18, 1996.  
See: 27 N.J.R. 609(a), 28 N.J.R. 1503(a).  
In (c)4 added fines.

#### Case Notes

State Department of Education, rather than administrative law judge, had jurisdiction to conduct due process review of responsibility for education of blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Agency, rather than Superior Court, was proper place for challenge to special education being provided to blind, retarded child. *L.P. v. Edison Bd. of Educ.*, 265 N.J.Super. 266, 626 A.2d 473 (L.1993).

Administrative agencies enjoy a great deal of flexibility in selecting the proceedings most suitable to achieving their regulatory aims. A high degree of discretion in exercising that choice reposes in the administrative agency (citing former N.J.A.C. 1:1-2.2). *Crema v. N.J. Dep't of Environmental Protection*, 94 N.J. 286, 463 A.2d 910 (1983).

Taxes paid to state, jurisdiction of the Office of Administrative Law. *Linden Disposal, Inc., v. Edison Township*, 94 N.J.A.R.2d (EPE) 1.

#### 1:1-3.3 Return of transmitted cases

(a) A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear must be in writing and received by the transmitting agency head within 13 days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may retransmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties which shall advise the parties of the time limit and requirements for explanations as set forth in (b) above.

(d) The agency head may extend the time limit for receiving explanations regarding the failure to appear when good cause is shown.

Amended by R.1989 d.605, effective December 18, 1989.  
See: 21 N.J.R. 3207(a), 21 N.J.R. 3914(a).

Deleted language stating that an initial decision shall be entered returning the case.

Amended by R.1991 d.279, effective June 3, 1991 (operative July 1, 1991).

See: 23 N.J.R. 639(a), 23 N.J.R. 1786(a).

Added new subsections (b) and (c), recodifying original rule text as subsection (a).

Amended by R.1991 d.513, effective October 21, 1991.

See: 23 N.J.R. 1728(a), 23 N.J.R. 3133(a).

Explanation for failure to appear to be submitted within 13 days.

## SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

### 1:1-4.1 Determination of contested case

(a) After an agency proceeding has commenced, the agency head shall promptly determine whether the matter is a contested case. If any party petitions the agency head to decide whether the matter is contested, the agency shall make such a determination within 30 days from receipt of the petition and inform all parties of its determination.

(b) When a question arises whether a particular matter is a contested case, legal advice shall be obtained from the Attorney General's office.

### 1:1-4.2 Settlement by agencies prior to transmittal to the Office of Administrative Law

If an agency attempts settlement prior to transmitting the matter to the Office of Administrative Law, settlement efforts may be conducted in any manner the agency believes may be appropriate and productive. The agency may utilize its own personnel or may request in writing to the Director of the Office of Administrative Law the services of an administrative law judge. An administrative law judge who conducts pre-transmission settlement efforts at the request of an agency will not thereafter be assigned to hear the case if settlement efforts are unsuccessful and the case is transmitted.

## SUBCHAPTER 5. REPRESENTATION

### 1:1-5.1 Representation

A party may represent him or herself, be represented by an attorney authorized to practice law in this State, or, subject to N.J.A.C. 1:1-5.4 and 1:1-5.5, be represented or assisted by a non-lawyer permitted to make an appearance in a contested case by New Jersey Court Rule R. 1:21-1(e) or be represented by a law graduate or student pursuant to R. 1:21-3(b). Except as provided by N.J.A.C. 1:1-5.4 and 1:1-5.6, a corporation must be represented by an attorney.

#### Case Notes

Attorney was properly disqualified from representing a public employee against a public employer. *Point Pleasant Borough v. Block*, 94 N.J.A.R.2d (OAL) 7.

Disabled child challenging school placement could not be represented by non-attorney. *T.W. v. Division of Developmental Disabilities*, 94 N.J.A.R.2d (OAL) 1.

Appellant, removed from employment and later reinstated with back pay, denied counsel fee; appellant entitled to award of 30 vacation days. *Harrington v. Dep't of Human Services*, 11 N.J.A.R. 537 (1989).

Board of Education ordered to pay reasonable counsel fees and costs incurred in the filing of petition which was filed by petitioner in order to carry out mandatory statutory duties. *Ross v. Jersey City Bd. of Educ.*, 5 N.J.A.R. 393 (1981).

### 1:1-5.2 Out-of-state attorneys; admission procedures

(a) An attorney from any other jurisdiction, of good standing there, or an attorney admitted in this State, of good standing, who does not maintain in this State a bona fide office for the practice of law, may, at the discretion of the judge, be admitted pro hac vice for the one occasion to participate in the proceeding in the same manner as an attorney authorized to practice in this State pursuant to New Jersey Court Rule R. 1:21-1 by complying with the following procedure:

1. Admission pro hac vice shall be by motion of an attorney authorized to practice in New Jersey. Forms are available from the Office of Administrative Law for this purpose.

2. Each motion seeking admission for the one occasion shall be served on all parties and have attached a supporting affidavit, signed by the attorney seeking admission, which shall state that payment has been made to the Client's Security Fund and Ethics Financial Committee.

The affidavit shall state how he or she satisfies each of the conditions for admission, including good cause, set forth in R. 1:21-2(a). He or she shall also agree in the affidavit to comply with the dictates of R. 1:21-2(b).

3. An annual payment made to the Client's Security Fund and Ethics Financial Committee shall entitle the attorney to appear in subsequent matters during the payment year, provided the attorney otherwise qualifies for admission.