

“Local service” means employment in any political subdivision operating under Title 11A, New Jersey statutes.

“Open competitive examination” means a test open to members of the public who meet the prescribed requirements for admission.

“Part time employee” means an employee whose regular hours of duty are less than the regular and normal work-week for that job title or agency.

“Permanent employee” means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.

“Position” means the assignment of specific duties and responsibilities requiring the employment of one person.

“Promotion” means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title.

“Promotional examination” means a test open to permanent employees who meet the prescribed requirements for admission.

“Provisional appointment” (PA) means employment in the competitive division of the career service pending the appointment of a person from an eligible list.

“Regular appointment” (RA) means the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.

“Removal” means termination of a permanent employee from employment for disciplinary reasons.

“Senior executive service” means positions in State service designated by the Board as having substantial managerial, policy influencing or policy executing responsibilities not included in the career or unclassified services.

“State service” means employment for the State of New Jersey.

“Suspension” means temporary separation from employment for disciplinary reasons.

“Title” means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications.

“Title scope” means a defined group of job titles used as a factor in determining eligibility for promotional examinations. Title scope may also include educational, experience and other specific requirements.

“Title series” means titles involving the same kind of work and ranked according to level of difficulty and responsibility.

“Unclassified service” means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.

“Unit scope” means a defined part of a governmental agency used as a factor in determining eligibility for promotional examinations.

“Working test period” means a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited.

Amended by R.1988 d.258, effective June 6, 1988.  
See: 20 N.J.R. 326(a), 20 N.J.R. 1183(a).

Added definitions “Closing date for examination”, “Filing date for examination”, “Title scope” and “Unit scope”.

Amended by R.1988 d.415, effective September 6, 1988.  
See: 20 N.J.R. 845(b), 20 N.J.R. 2255(a).

Added the definition “Department”.  
Amended by R.1992 d.416, effective October 19, 1992.  
See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised definition “demotion”.  
Amended by R.2005 d.65, effective February 22, 2005.  
See: 36 N.J.R. 4566(a), 37 N.J.R. 586(a).

In “immediate family”, inserted “domestic partner” following “employee’s spouse”.

**Law Review and Journal Commentaries**

Civil Service—Administrative Procedure—Counties—Municipalities.  
Judith Nallin, 134 N.J.L.J. No. 17, 50 (1993).

**Case Notes**

Open competitive examination to residents for position of police chief violated the Civil Service Act, the Board’s own regulations, and the rule-making provisions of the Administrative Procedure Act. Matter of Police Chief (M2010P) South Orange Village, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).

“Local government service” includes employees of county prosecutor and sheriff’s office (citing former rule N.J.A.C. 4:1-2.1). Gudgeon v. County of Ocean, 135 N.J.Super. 13, 342 A.2d 553 (App.Div.1975) certification granted 70 N.J. 138, 358 A.2d 185.

Enrollment in retirement system is neither immediate nor automatic (citing former N.J.A.C. 4:1-2.1). Frew v. Bd. of Trustees Public Employees’ Retirement System, 8 N.J.A.R. 16 (1984).

**4A:1-1.4 Petition for promulgating, amending or repealing rules**

(a) Any interested person may file a petition with the Commissioner to promulgate, amend or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The Commissioner shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:30-3.6.

## SUBCHAPTER 2. RECORDS

### 4A:1-2.1 Department of Personnel access to appointing authority records and information

Appointing authorities shall provide Department of Personnel representatives free access to their premises and to requested records and information.

### 4A:1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;
2. Information on specific educational or medical qualifications required for employment;
3. Final orders of the Commissioner or Board; and
4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) See N.J.A.C. 4A:4-2.16 concerning examination records.

Amended by R.1992 d.416, effective October 19, 1992.  
See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).  
Revised (b); added new (c).

## SUBCHAPTER 3. ORGANIZATION

### 4A:1-3.1 General provisions

(a) The Department of Personnel is constituted as a principal State Department consisting of the:

1. Commissioner of Personnel;

2. Merit System Board; and

3. Such subdivisions as the Commissioner may deem necessary.

### 4A:1-3.2 Commissioner of Personnel

(a) The Commissioner of Personnel shall:

1. Serve as chairperson of the Merit System Board;
2. Serve as principal executive and request officer of the Department;
3. Maintain a management information system to implement Title 11A, New Jersey Statutes;
4. Establish necessary programs and policies for the State and local service;
5. Assist the Governor in personnel and labor relations;
6. Render final administrative decisions on appeals of classification, salary, layoff rights and State noncontractual grievances;
7. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations and other appropriate groups;
8. Make required reports to the Governor and Legislature;
9. Approve appointments in the State and local service; and
10. Perform such other duties as prescribed by law and these rules.

#### Case Notes

Powers and duties; approval of classification plans. Gloucester Cty. Welfare Bd. v. N.J. Civ. Serv. Comm'n., 93 N.J. 384, 461 A.2d 575 (1983) and (dissenting opinions).

### 4A:1-3.3 Merit System Board

(a) The Merit System Board shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;
2. Render final administrative decisions on appeals and on other matters referred by the Commissioner, except for those matters listed in N.J.A.C. 4A:1-3.2(a)6 or delegated to the Commissioner;
3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;
4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity; and

Suspension; permitting client's continued self-abuse. *Forde v. Hunterdon Developmental Center*, 92 N.J.A.R.2d (CSV) 251.

Removal; selling cocaine. *Cameron v. Preakness Hospital, Passaic County*, 92 N.J.A.R.2d (CSV) 247.

Insubordination; suspension without pay. *Ramos v. Preakness Hospital, Passaic County*, 92 N.J.A.R.2d (CSV) 244.

Officer medically unfit to perform his duties; resignation in good standing. *Muller v. Public Safety, Atlantic County*, 92 N.J.A.R.2d (CSV) 242.

Resignation in good standing; employee medically unfit to fully perform his duties. *Hall v. Ocean County Road Department*, 92 N.J.A.R.2d (CSV) 240.

Suspension; improper touching of clients. *Warrelmann v. North Princeton Developmental Center*, 92 N.J.A.R.2d (CSV) 225.

Suspension; neglect of duty. *Van Buskirk v. New Jersey State Prison*, 92 N.J.A.R.2d (CSV) 220.

Suspension; failure to respond to a burglary alarm. *Ruggiero v. Jackson Township Department of Law and Public Safety*, 92 N.J.A.R.2d (CSV) 214.

Removal; incompetency and inefficiency. *Kistner v. Department of Transportation*, 92 N.J.A.R.2d (CSV) 207.

Removal; insubordination; incidental duties. *Junna v. Department of Parks and Recreation, Atlantic County*, 92 N.J.A.R.2d (CSV) 205.

Suspension; hitting client in face with wet washcloth. *Hunterdon Developmental Center v. Isak*, 92 N.J.A.R.2d (CSV) 203.

Removal for malingering. *Hudak v. Department of Treasury, Div. of General Services*, 92 N.J.A.R.2d (CSV) 201.

Removal; physical inability to perform duties. *Hanna v. Township of South Orange Village*, 92 N.J.A.R.2d (CSV) 198.

Removal not justified; nephrotic syndrome condition. *Crews v. Ancora Psychiatric Hospital*, 92 N.J.A.R.2d (CSV) 188.

Patient abuse; removal. *Buratt v. Marlboro Psychiatric Hospital, State Department of Human Services*, 92 N.J.A.R.2d (CSV) 184.

Fine; conduct subversive to good order and discipline and failure to submit timely, properly written report. *Bollettieri v. Camden Police Department*, 92 N.J.A.R.2d (CSV) 181.

Suspension; call-in procedures for absences. *Wewer v. Burlington County*, 92 N.J.A.R.2d (CSV) 174.

Suspension; rough treatment of patient. *McFadden v. John L. Montgomery Medical Center*, 92 N.J.A.R.2d (CSV) 171.

Discharge; assaulting inmate and filing false report. *Gant v. Salem County Jail*, 92 N.J.A.R.2d (CSV) 168.

Developmental center worker slapped patient; dismissal. *Peters v. North Princeton Developmental Center*, 92 N.J.A.R.2d (CSV) 149.

Employee was guilty of conduct unbecoming a state employee; suspension. *Lawson v. Department of Human Services, Ancora Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 145.

Human services assistant was guilty of physically and verbally abusing a patient; removal. *Goldsboro v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 143.

Bridge repairer engaged in conduct unbecoming an employee in public service; removal. *Fox v. Monmouth County Bridge Dept.*, 92 N.J.A.R.2d (CSV) 137.

Truck driver was not physically unable to perform job duties; demotion not warranted. *DeLorenzo v. Camden County*, 92 N.J.A.R.2d (CSV) 134.

Corrections officer was not guilty of neglect of duty. *Casey v. Mountainview Youth Correctional Facility*, 92 N.J.A.R.2d (CSV) 129.

Employee late for work twice; suspended from employment for six months. *Carter v. Riverfront State Prison*, 92 N.J.A.R.2d (CSV) 126.

Chronic and excessive absenteeism and tardiness; removal. *Boone v. Camden County Health Services Center*, 92 N.J.A.R.2d (CSV) 125.

Removal; tardiness on two occasions. N.J.S.A. 18A:2-6, 11:2A-6. *Borja v. Newark Board of Educ.*, 92 N.J.A.R.2d (CSV) 114.

Physical restraint of a patient did not constitute abuse of a patient. N.J.S.A. 11A:1-1 et seq., 11A:1-2, 11A:2-6, 11A:2-20. *Summers v. Marlboro Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 113.

Officer late two days in a row properly removed from employment. *Shareef v. Northern State Prison*, 92 N.J.A.R.2d (CSV) 108.

Worker would be suspended for six months rather than removed from employment. *Russ v. Arthur Bresbain Child Treatment Center*, 92 N.J.A.R.2d (CSV) 105.

Employee was guilty of harassment and intimidation, conduct unbecoming a public employee, justifying removal. *Muhammad v. State Dept. of Corrections*, 92 N.J.A.R.2d (CSV) 103.

Conduct unbecoming a public employee; suspension. *Borchester v. Public Works of Lacey Township*, 92 N.J.A.R.2d (CSV) 89.

Proper use of defense maneuver on patient; removal not justified. *Blair v. Ancora Psychiatric Hosp.*, 92 N.J.A.R.2d (CSV) 87.

Use of word "nigger"; removal. *Graziano v. Monmouth County Sheriff's Dept.*, 92 N.J.A.R.2d (CSV) 73.

Theft of two dollars of public funds; removal. *Carter v. Cumberland County Welfare*, 92 N.J.A.R.2d (CSV) 71.

Willfully and with intent performing duties in an inferior manner; suspension for 28 days. *Huesser v. Camden County Mun. Utility Authority*, 92 N.J.A.R.2d (CSV) 48.

Attempt to put arms around another employee; removal from employment. *Fine v. Department of Public Property of Middlesex County*, 92 N.J.A.R.2d (CSV) 45.

Striking client on head; suspension. *Cobb v. Woodbridge Development Center*, 92 N.J.A.R.2d (CSV) 43.

There was no inappropriate physical contact or mistreatment of a resident; suspension not justified. *Rease v. Division of Youth and Family Services*, 92 N.J.A.R.2d (CSV) 35.

Testing positive for drug use; conduct unbecoming a public employee; removal. *Hamilton v. Department of Corrections*, 92 N.J.A.R.2d (CSV) 31.

Testing positive for cocaine use; removal. *Brevard v. Training School for Boys*, 92 N.J.A.R.2d (CSV) 28.

Insubordination, conduct unbecoming a public employee, neglect of duty, and violation of township rules and regulations; removal. *Zara v. Township of Hamilton, Water Pollution Control*, 92 N.J.A.R.2d (CSV) 25.

Patient abuse and intentional misuse of authority justified suspension. *Williams v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 23.

Corrections officer properly suspended for 30 days. *Barksdale v. Edna M. Mahan Correctional Facility*, 92 N.J.A.R.2d (CSV) 3.

Officer tricked into smoking marijuana; not conduct unbecoming public employee. N.J.S.A. 2C:2-1. *Cox v. Bayside State Prison*, 92 N.J.A.R.2d (CSV) 1.

Reporting for work while intoxicated; suspension. *Rucinski v. Department of Fire & Emergency Services, City of Jersey City*, 91 N.J.A.R.2d (CSV) 97.

Suspension; insubordination based on refusal to take drug test. *Bryant v. Fire & Emergency Services Department, Jersey City*, 91 N.J.A.R.2d (CSV) 95.

Failing random drug test; removal. *Mitchell v. County of Camden, Sheriff's Department*, 91 N.J.A.R.2d (CSV) 89.

Conduct unbecoming public official; removal. N.J.S.A. 2C:35-10, 2C:51-1. *Jones v. Ancora Psychiatric Hospital*, 91 N.J.A.R.2d (CSV) 83.

Corrections officer was medically unfit to perform his job. *Gerace v. Adult Detention, Atlantic County*, 91 N.J.A.R.2d (CSV) 81.

Negligent conduct unbecoming a public employee; suspension. *Grier v. Department of Transportation*, 91 N.J.A.R.2d (CSV) 63.

Absence from work without notice; suspension without pay. *Dean v. Marlboro Psychiatric Hospital*, 91 N.J.A.R.2d (CSV) 57.

Officer was guilty of conduct unbecoming an employee and public service. N.J.S.A. 2a:156A-3. *Engi v. State Department of Corrections*, 91 N.J.A.R.2d (CSV) 53.

Ten-day suspension was too harsh given employee's long work history and lack of prior disciplinary record. *Thomas v. Vineland Developmental Center*, 91 N.J.A.R.2d (CSV) 47.

Removal; cocaine. *White v. Mercer County, Dept. of Public Care and Safety*, 91 N.J.A.R.2d (CSV) 25.

Neglect of duty and intentional misstatement of material facts; discharge. *Kinnard v. Mountainview Youth Correctional Facility*, 91 N.J.A.R.2d (CSV) 17.

Termination; unauthorized five-week leave of absence. *Harp v. Ancora Psychiatric Hosp.*, 91 N.J.A.R.2d (CSV) 11.

Employee was properly terminated for absenteeism and falsification of official records. *Goodman v. N. Jersey Dept. of Human Services*, 91 N.J.A.R.2d (CSV) 9.

Thirty-day suspension with no demotion was appropriate penalty. *Allegar v. Lacey Dept. of Public Works*, 91 N.J.A.R.2d (CSV) 1.

Dismissal of teaching staff member for unbecoming conduct modified. In the Matter of Tenure Hearing of Theresa Lucarelli, Board of Education of the Borough of Brielle, Monmouth County, 97 N.J.A.R.2d (EDU) 537.

Commission lacks jurisdiction over school employment termination petition if termination based on civil service laws. *Lo Russo v. State Operated School District of Jersey City, Hudson County*, 97 N.J.A.R.2d (EDU) 505.

Dismissal of special education teacher for unbecoming conduct due to falsification of grades modified. In the Matter of the Tenure Hearing of Andrew Phillips, 97 N.J.A.R.2d (EDU) 447.

Removal of school custodian justified. In the Matter of the Tenure Hearing of Gwinnett, 93 N.J.A.R.2d (EDU) 563.

Removal of employee due to job abandonment affirmed. *Cugler v. Pep Boys*, 97 N.J.A.R.2d (LBR) 62.

Employee failing to demonstrate pretextual reasons for termination fails to meet burden in claim of discrimination. *Lynch v. Trenton Iron and Metal Corporation*, 97 N.J.A.R.2d (LBR) 58.

Employee's poor discipline history defeats claim of retaliatory termination. *Smith v. Borough of Eatontown*, 97 N.J.A.R.2d (LBR) 50.

Former state police officer's discharge for drug addiction defeats later application for campus police commission if evidence fails to show rehabilitation. *Stengel v. New Jersey Division of State Police*, 97 N.J.A.R.2d (POL) 15.

Termination; use of unjustified and excessive force on a prisoner. *Division of State Police v. Jiras*, 94 N.J.A.R.2d (POL) 1, remanded 96 N.J.A.R.2d (POL) 1.

State trooper dismissed for drug violations and violations of regulations relating to use of troop transportation, consumption of alcoholic beverages and solicitation of funds. *Division of State Police v. Hall*, 93 N.J.A.R.2d (POL) 33.

State trooper suspended for six months. *Division of State Police v. Buhon*, 93 N.J.A.R.2d (POL) 23.

Appellant removed from position as drawbridge operator on disciplinary charges for possessing, consuming and being under the influence of an alcoholic beverage while on duty. *Varga v. Union Co. Dep't of Public Works*, 11 N.J.A.R. 546 (1989).

Removal of police officer from position for neglect of duty, serious breach of discipline and conduct unbecoming an employee in public service (citing former N.J.A.C. 4:1-16.9). *Simone v. Borough of Elmwood Park*, 7 N.J.A.R. 72 (1983).

Civil Service Commission has the authority to order removal based on term of the forfeiture statute. Forfeiture following the conviction of a crime of a third degree is automatic (citing former N.J.A.C. 4:1-16.9). *Dinkins v. Cape May Cty.*, 6 N.J.A.R. 202 (1983).

Discretion with regard to removal: the State is not precluded from using the normal regulatory removal machinery even though petitioner's forfeiture of office, as a consequence of conviction, was immediate and automatic (citing former N.J.A.C. 4:1-16.9). *Schonwald v. Dep't of Transportation*, 5 N.J.A.R. 473 (1982).

Suspension based on failure to dress in a manner appropriate to his position: insubordination (citing former N.J.A.C. 4:1-16.7). *Koehler v. Dep't of Community Affairs*, 5 N.J.A.R. 318 (1981).

#### 4A:2-2.4 Limitations on suspensions and fines

(a) No suspension or fine shall exceed six months except for suspensions pending criminal complaint or indictment. See N.J.A.C. 4A:2-2.7.

(b) In local service, the appointing authority may provide that a suspension be with or without pay. In State service, suspensions shall be without pay unless directly authorized to be with pay by the department head.

(c) An appointing authority may only impose a fine as follows:

1. As a form of restitution;
2. In lieu of a suspension, when the appointing authority establishes that a suspension of the employee would be detrimental to the public health, safety or welfare; or
3. Where an employee has agreed to a fine as a disciplinary option.

(d) An employee may pay a fine of more than five days salary in a lump sum or through installments. Unless otherwise agreed to by the employee, an installment may not be more than five percent of the gross salary per pay for a fine under \$500.00; 10 percent of gross salary per pay period for a fine between \$500.00 and \$1,000; or 15 percent of gross salary per pay period for a fine over \$1,000.

Petition for Rulemaking.  
See: 30 N.J.R. 3103(a), 30 N.J.R. 3552(a).

#### Case Notes

Dismissal of police officer was supported by officer's intentional avoidance of communication with police chief prior to taking unauthorized vacation; officer's conduct was so egregious as to warrant suspension of greater than six months, and civil service rules require dismissal of employee whose offense dictates such suspension. *Cosme v. Borough of East Newark Tp. Committee*, 304 N.J.Super. 191, 698 A.2d 1287 (A.D. 1997).