

Petition which alleged that county superintendent had no reasonable basis for requiring substitute teaching certificate for site monitor positions was dismissed as untimely and without merit. *Wynne v. Tillery, Camden County Superintendent of Schools*, 96 N.J.A.R.2d (EDU) 995.

Teacher's complaint that school board wrongfully deducted monies from her salary was dismissed as untimely filed. *Hoffman v. Township of Hillsborough*, 96 N.J.A.R.2d (EDU) 943.

Petition challenging school board's acceptance of instructor's resignation was dismissed as not timely filed. *Wilson v. Toms River Regional School District*, 96 N.J.A.R.2d (EDU) 872.

School administrator's request for payment of unused vacation time was denied based upon untimely filing of petition. *McCrea v. Upper Saddle River Board of Education*, 96 N.J.A.R.2d (EDU) 817.

Timely resignation entitled principal to unused vacation pay. *Gilson v. Board of Education of the Township of Dennis*, 96 N.J.A.R.2d (EDU) 801.

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.

Statutory period to file petition challenging school board's salary action commenced upon notification of that action. *Conklin v. Old Bridge Township Board of Education*, 96 N.J.A.R.2d (EDU) 502.

Tenured school psychologist's petition appealing denial of claim for benefits was timely if it was filed with Commissioner within 90 days after school board's denial subsequent to Workers' Compensation determination. *Sweet v. Jackson Township Board of Education*, 96 N.J.A.R.2d (EDU) 471.

Commissioner of Education has jurisdiction over appeal of school board attendance policy determination. *F.C. v. Palmyra Board of Education*, 96 N.J.A.R.2d (EDS) 329.

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. *Driggins 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. *Driggins 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.

6A:3-1.4 Format of petition of appeal

(a) A petition shall include the name and address of each petitioner; the name and address of each party respondent; a statement of the specific allegation(s) and essential facts supporting them which have given rise to a dispute under the school laws; the relief petitioner is seeking; and a notarized statement of verification or certification in lieu of affidavit for each petitioner. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen. A petition 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 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 as many itemized paragraphs as are necessary the specific allegation(s), and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner requests that (here set forth the relief desired).

Signature of petitioner or
representative

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 of Petitioner

Sworn and subscribed to before me this
_____ day of _____ (month), _____ (year)

(Signature of Notary Public or other person
authorized to administer an oath or affirmation)

(b) A petition submitted by a pro se petitioner that substantially includes the requisite information as set forth in (a) above shall be accepted for filing notwithstanding that the petition does not conform to the prescribed technical format, and such petitioner shall be notified of any material deficiencies which must be remedied before the matter can proceed. However, where a petition does not meet minimal standards regarding parties, allegations or relief sought, it may be returned to the petitioner without being filed.

1. Any submission returned to a petitioner pursuant to this subsection shall be accompanied by a letter noting the date of the submission's receipt and identifying the deficiencies deemed to constitute substantial noncompliance.

(c) 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.

(d) 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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote (a); inserted a new (b); and recodified former (b) and (c) as (c) and (d).

6A:3-1.5 Filing and service of answer

(a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, unless a shorter period is directed by the Commissioner due to the emergent nature of a matter. The answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition.

1. A respondent shall notify the Bureau of Controversies and Disputes of any change in address or telephone number prior to transmittal of a matter to the OAL.

(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 petition.

(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, and of any supporting papers the respondent includes, shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner. In no case shall a respondent submit materials to the Commissioner which have not been served upon the petitioner and other parties.

(e) Failure to answer within the 20-day period from receipt of service shall result in a notice to the respondent informing the respondent that unless an answer is filed within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner may render a summary decision.

(f) Upon written application by a party, the Commissioner may extend the time for answer, provided that the application was received by the Commissioner prior to the expiration of the initial 20-day period, and provided that a copy of the application was served upon all parties to the contested case.

1. Applicants for extensions are encouraged to secure the consent of the other parties, and where consent has been obtained prior to application to the Commissioner, the application shall so state. Any reasonable request for extension shall be granted when all parties consent. Requests for extensions which are opposed by one or more of the parties may be granted upon a finding of good cause shown.

(g) Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner.

1. Any papers filed in conjunction with such a motion shall be submitted in original form with two copies.

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.
Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

6A:3-1.6 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 following standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

(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. 6A:3-1.5. 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 an application for interim relief or stay prior to any transmittal of the underlying matter to the OAL for hearing. Once a matter has been transmitted, any motion for emergent relief shall be filed with the Commissioner who shall forward the motion for determination by the OAL in accordance with applicable rules of the OAL.

(e) All papers submitted in conjunction with applications for interim relief or stay shall be in original form with two copies.

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. Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote (b) and (d); in (c), changed N.J.A.C. reference in the introductory paragraph; and added (e).

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).

6A:3-1.7 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 the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application. Following transmittal to the OAL, motions to amend a petition or answer shall be filed with and determined by the OAL in accordance with applicable rules of the OAL. Any amendment or application to amend shall be submitted in original form with two copies.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

6A:3-1.8 Permission to intervene or participate

(a) 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 shall be made to the OAL.

(b) Such requests, whether decided by the Commissioner or by the OAL, shall be reviewed in accordance with the standards set forth in applicable rules of the OAL.

1. Any request for intervention or participation shall be submitted in original form with two copies.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

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.

6A:3-1.9 Appearance and representation

(a) 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 other person as set forth in applicable rules of the OAL.

1. A corporation shall be represented by an attorney or non-lawyer representative in accordance with applicable rules of the OAL.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

6A:3-1.10 Dismissal or transfer of petition

(a) At any time prior to transmittal of the pleadings to the OAL, the Commissioner, in his or her discretion or upon motion to dismiss filed in lieu of answer, may dismiss the petition on the grounds that no sufficient cause for determination has been advanced, or for lack of jurisdiction, failure to prosecute or other good reason.

(b) If a petition is filed with the Bureau of Controversies and Disputes which appears, because of the nature of its allegations, to be more properly filed with another office in the Department, or with the Division on Civil Rights, the Bureau Director may confer with appropriate staff in such office or division and, upon agreement that the matter should properly be before such office or division, transfer the petition without docketing it as a school law dispute before the Commissioner. In all such cases, notice of the transfer shall be promptly provided to the parties, and such notice shall include the date the petition was filed with the bureau.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

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.

6A:3-1.11 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. All hearings, whether a matter is retained by the Commissioner or transmitted to the OAL, shall be conducted in accordance with the rules of the OAL.

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.

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Case Notes

Parent failed to properly appeal from school board decision. *R.J. v. Lower Camden County Regional School District*, 97 N.J.A.R.2d (EDU) 155.

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.

School band member's threat to kill band director was reasonable grounds for suspension from band activities. *McB. v. Washington Township Board of Education*, 96 N.J.A.R.2d (EDU) 298.

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).

6A:3-1.12 Summary decision

(a) At any time concurrent with or subsequent to the filing of an answer, but prior to transmittal to the OAL, any party may move before the Commissioner for summary decision. The Commissioner may decide such motion directly consistent with applicable rules of the OAL or transmit it to the OAL for disposition.

1. All papers filed in conjunction with motions for summary decision shall be submitted in original form with two copies.

(b) Applications for summary decision after a matter has been transmitted to the OAL shall be filed with the ALJ in accordance with applicable rules of the OAL.

As amended, R.1973 d.232, effective August 10, 1973.

See: 5 N.J.R. 332(a).

As amended, R.1973 d.266, effective September 18, 1973.

See: 5 N.J.R. 332(b).

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).

Recodified from N.J.A.C. 6:24-1.15 with stylistic changes.

N.J.A.C. 6:24-1.13 was formerly entitled "Evidence" and the following annotations pertain to that rule:

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.

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

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

Amended by R.2000 d.137, effective April 3, 2000.

See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

Rewrote the section.

Case Notes

Admissibility of documentary evidence under former N.J.A.C. 6:24-1.11. *Bd. of Ed., Oakland Boro. v. Mayor and Council, Oakland Boro., Bergen Cty.*, 1974 S.L.D. 1114.

6A:3-1.13 Settlement or withdrawal of contested matter

(a) Prior to transmittal to the OAL, a petitioner may withdraw a petition at any time. Upon such withdrawal, the Commissioner shall discontinue all proceedings and notify

all parties accordingly. Following transmittal to OAL, a petitioner may request withdrawal in accordance with applicable rules of the OAL.

(b) Prior to transmittal to the OAL, parties to a contested matter may notify the Commissioner of settlement at any time.

1. Where settlement occurs prior to the filing of an answer, the matter shall be deemed withdrawn pursuant to (a) above.

2. Where settlement occurs subsequent to the filing of an answer, the parties shall set forth the full settlement terms for review and approval by the Commissioner.

(c) Following transmittal of a matter to the OAL, parties shall effectuate settlement in accordance with applicable rules of the OAL.

(d) Any proposed settlement, whether submitted to the Commissioner or to the OAL, shall indicate, where the district board of education is a party to the contested matter, that the district board has consented to the terms of such settlement.

(e) A proposed settlement, whether submitted to the Commissioner or to the OAL, shall not include terms restricting access to records or information deemed public by law, nor shall it include terms requiring disclosure of information protected from such disclosure by law.

New Rule, R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).

6A:3-1.14 Written decision

(a) Every determination of a controversy or dispute arising under the school law, or of charges against a district board of education employee or an employee of a State agency who is accorded tenure under the school law, with the exception of employees of charter schools, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth findings of fact, conclusions of law and an appropriate order pursuant to applicable rules of the OAL.

(b) Any determination or decision of the Commissioner is appealable to the State Board of Education, except where otherwise provided by law; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by the Commissioner, the State Board or a court.

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

Deleted (b)-(e).
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Recodified from N.J.A.C. 6:24-1.16, new (b) added.
N.J.A.C. 6:24-1.14 was formerly rules entitled "Stenographic transcript" and the following annotations pertain to that rule:
Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).
Deleted "either party may ... such stenographic transcript."
Repealed by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).
Rewrote the section.

6A:3-1.15 Motion for stay, reconsideration or clarification of Commissioner's decision

(a) Any party may make a motion for stay of a Commissioner's decision pending a determination on appeal to the State Board of Education. Such motion shall be made subsequent to, or concurrent with, the filing of a notice of appeal with the State Board, but within 30 days of the filing of the Commissioner's decision.

1. A motion shall be filed with the Commissioner together with proof of service on each other party, shall be briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner, based upon the criteria set forth for the granting of interim relief at N.J.A.C. 6A:3-1.6, in accordance with applicable rules of the OAL.

(b) Any party may make a motion for reconsideration or clarification of the Commissioner's decision within 10 days of the filing of the Commissioner's decision.

1. A motion shall be filed with the Commissioner together with proof of service on each other party, shall be briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner in accordance with applicable rules of the OAL.

2. A motion for reconsideration shall be considered based upon the following:

i. Claim(s) of mistake, provided, however, that disagreement with the outcome of a decision, or with the analysis upon which it is based, shall not constitute "mistake" for purposes of this section;

ii. Newly discovered evidence likely to alter the outcome of a matter, where such evidence could not have been previously discovered by due diligence;

iii. Newly ascertained misrepresentation or other misconduct of an adverse party, where such misrepresentation or misconduct could not have been previously known; or

iv. Reversal of a prior judgment on which the present matter is based.

3. A motion for clarification shall be considered based upon necessity as specifically demonstrated in the papers submitted with the motion.

(c) For purposes of this section, a Commissioner's decision shall be deemed filed three days after the date of mailing to the parties.