

**CHAPTER 2****APPEALS****Authority**

N.J.S.A. 18A:4-1 through 18A:4-20, 18A:6-27 through 18A:6-29, 18A:6-39, 18A:7A-15 and 18A:12-29.

**Source and Effective Date**

R.1994 d.17, effective December 8, 1993.  
See: 25 N.J.R. 4548(a), 26 N.J.R. 198(b).

**Chapter Expiration Date**

Pursuant to Executive Order No. 22(1994), Chapter 2, Appeals, expires on June 8, 2000. See: 26 N.J.R. 3783(a) and 3942(a).

**Chapter Historical Note**

Chapter 2, Appeals, was filed and became effective prior to September 1, 1969.

1973 Revisions: Amendments became effective November 21, 1973 as R.1973 d.329. See: 6 N.J.R. 6(a).

1976 Revisions: Amendments became effective May 25, 1976 as R.1976 d.158. See: 8 N.J.R. 171(c), 8 N.J.R. 275(a).

1977 Revisions: Amendments became effective November 10, 1977 as R.1977 d.420. See: 9 N.J.R. 559(a).

1979 Revisions: Amendments became effective April 4, 1979 as R.1979 d.140. See: 10 N.J.R. 472(c), 11 N.J.R. 8(b), 11 N.J.R. 223(c).

1982 Revisions: Amendments became effective August 16, 1982 as R.1982 d.268. See: 14 N.J.R. 261(a), 14 N.J.R. 913(a).

1984 Revisions: Amendments became effective March 21, 1984 as R.1984 d.122. See: 15 N.J.R. 1977(b), 16 N.J.R. 878(a).

1989 Revisions: The current text of Chapter 2 was repealed and new rules regarding Appeals became effective February 6, 1989 as R.1989 d.67. See: 20 N.J.R. 2615(a), 21 N.J.R. 288(b).

Pursuant to Executive Order No. 66(1978), Chapter 2 was readopted as R.1994 d.17. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

**CHAPTER TABLE OF CONTENTS****SUBCHAPTER 1. GENERAL PROVISIONS**

- 6:2-1.1 Appealable decisions
- 6:2-1.2 Who may appeal
- 6:2-1.3 Time for appeal
- 6:2-1.4 Computation of time
- 6:2-1.5 Extensions of time
- 6:2-1.6 How to appeal
- 6:2-1.7 Contents of notice of appeal and notice of cross appeal
- 6:2-1.8 Record on appeal
- 6:2-1.9 Supplementation of the record
- 6:2-1.10 Filing and service of briefs, motions, applications, and exceptions
- 6:2-1.11 Time for serving and filing of briefs
- 6:2-1.12 Failure to meet filing deadlines
- 6:2-1.13 Contents of briefs
- 6:2-1.14 Appendices
- 6:2-1.15 Length of briefs
- 6:2-1.16 Inadequacy or impropriety of briefs and papers
- 6:2-1.17 Exceptions to reports of the Legal Committee
- 6:2-1.18 Motions

6:2-1.19 Relaxation of the rules

**SUBCHAPTER 2. MISCELLANEOUS PROCEEDINGS**

- 6:2-2.1 Motion to appear as amicus curiae
- 6:2-2.2 Motion for stay of a decision of the Commissioner or State Board of Engineers
- 6:2-2.3 Motion for leave to appeal an interlocutory order, decision or action
- 6:2-2.4 Emergency relief
- 6:2-2.5 (Reserved)
- 6:2-2.6 Issuance of an administrative order creating a State-operated school district
- 6:2-2.7 Motions for clarification and/or reconsideration of a State Board decision

**SUBCHAPTER 3. REVIEW AND DECISION**

- 6:2-3.1 Functions of the Legal Committee
- 6:2-3.2 Oral argument
- 6:2-3.3 Authority to decide applications for emergency relief
- 6:2-3.4 Decision of the State Board

**SUBCHAPTER 1. GENERAL PROVISIONS****6:2-1.1 Appealable decisions**

(a) Final decisions of the Commissioner of the Department of Education, of the State Board of Examiners, and of the School Ethics Commission are appealable to the State Board of Education. Final decisions include the following:

1. Any determination of the Commissioner, including, as to those separable issues upon which the Commissioner has rendered a final decision, a decision remanding all or part of a controverted case;
2. Any decision of the State Board of Examiners pertaining to the revocation or suspension of a certificate issued by the Board of Examiners; and
3. Any decision of the School Ethics Commission finding a violation of the School Ethics Act (N.J.S.A. 18A:12-29d) at such time as the Commissioner's decision regarding the sanction has been rendered.

(b) The State Board, upon application made pursuant to N.J.A.C. 6:2-2.3, may grant leave to appeal from an interlocutory order, decision or action of the Commissioner, or his or her representative, or of the Board of Examiners, or of the School Ethics Commission.

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

**6:2-1.2 Who may appeal**

(a) Any party aggrieved by a decision of the Commissioner, or a decision by the Board of Examiners to revoke or suspend certification, or by the School Ethics Commission finding a violation of the School Ethics Act may appeal to the State Board of Education.

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

(c) A respondent may cross appeal as provided by N.J.A.C. 6:2-1.3(b).

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

### 6:2-1.3 Time for appeal

(a) Appeals from final decisions of the Commissioner, or of the Board of Examiners, or of the School Ethics Commission shall be taken within 30 days of the filing date of the decision from which appeal is taken.

(b) Cross appeals may be taken by filing notice of cross appeal within 10 days of service of notice of appeal.

(c) Applications for leave to appeal from interlocutory orders, decisions or actions shall be made within the time provided by N.J.A.C. 6:2-2.3.

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

#### Case Notes

Appeal to State Board of Education was dismissed because school district failed to inform State Board as to whether it wished to proceed with its appeal. Board of Education of the Borough of Lincoln Park v. Klagholz, 96 N.J.A.R.2d (EDU) 557.

### 6:2-1.4 Computation of time

(a) A decision of the Commissioner or State Board of Examiners shall be deemed filed three days after the date of mailing to the parties.

(b) For purposes of appeal to the State Board, a decision of the School Ethics Commission finding a violation of the School Ethics Act shall be deemed filed upon the filing of the Commissioner's decision regarding the sanction.

(c) In computing any period of time fixed by this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

#### Case Notes

Appeal to State Board of Education from commissioner's decision dismissed after appeal filed outside statutory 30-day limit. Sheridan v. Orange Township Board of Education, 96 N.J.A.R.2d (EDU) 142.

Parents' appeal to State Board of Education untimely when filed four months after commissioner's decision. Cranford Township Board of Education v. McGuire, 96 N.J.A.R.2d (EDU) 140.

### 6:2-1.5 Extensions of time

(a) No extension of time may be granted to enlarge the time specified for appeal or for cross appeal.

(b) By notice to the Legal Committee of the State Board of Education, extensions with consent of all parties for filing briefs or exceptions to the report of the Legal Committee may be obtained for a period of time not to exceed an accumulated total of 30 days for all extensions in one case.

(c) Requests for extensions of time without the consent of all parties may be granted only by leave of the Legal Committee for a period not to exceed 10 days for any party in one case. The Legal Committee may grant further extensions without the consent of all parties only upon a showing of good cause and the absence of prejudice.

(d) Extensions of time that are opposed, or a combination of opposed and unopposed, may not exceed an accumulated total of 30 days for all extensions in one case. Further extensions of time may be granted only by leave of the Legal Committee upon a showing of good cause.

### 6:2-1.6 How to appeal

(a) An appeal or cross appeal shall be taken by serving a copy of the notice of appeal or cross appeal upon all other parties and by filing the original with the Legal Committee of the State Board of Education at 225 East State Street, CN 500, Trenton, New Jersey 08625, and a copy with the Commissioner of the Department of Education, State Board of Examiners or School Ethics Commission.

(b) An appeal or cross appeal shall be considered filed upon receipt of notice of appeal by the Legal Committee if hand delivered or upon mailing if appended thereto is a proof of mailing including either:

1. An affidavit of the person mailing the appeal; or
2. A certificate of mailing signed by the attorney for the party filing the appeal.

(c) Where there is no accompanying affidavit or certificate of mailing, the appeal shall be deemed to have been mailed three days before receipt of the appeal by the State Board.

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

### 6:2-1.7 Contents of notice of appeal and notice of cross appeal

(a) A notice of appeal or notice of cross appeal shall set forth the name of the party taking the appeal and his or her address or that of his or her attorney if he or she is represented, the names of all other parties, and shall specifically designate the decision appealed from, or such part as appealed from.

(b) Proof of service shall be appended to notice of appeal or cross appeal in the form of one of the following:

1. An acknowledgement of service signed by the attorney for the party or signed and acknowledged by the party;

2. An affidavit of the person making service; or

3. A certificate of service appended to the paper to be filed and signed by the attorney for the party making service.

**6:2-1.17 Exceptions to reports of the Legal Committee**

(a) Whenever there is a written report of the Legal Committee as provided by N.J.A.C. 6:2-3.1(d), the parties may serve and file exceptions within 10 days of the date on which the report is filed. Exceptions shall be filed concurrently and shall not exceed 10 pages. No other papers shall be served or filed without leave of the Legal Committee.

(b) Written reports of the Legal Committee shall be deemed filed three days after the date of mailing to the parties.

**6:2-1.18 Motions**

(a) Every motion shall be accompanied by a brief, conforming to the requirements of either N.J.A.C. 6:2-1.13(c) or (e). The brief shall explain clearly the nature of the action, the relief sought by the moving party and why the movant is entitled thereto.

(b) Every brief shall have appended to it any decision or order of the Commissioner or State Board of Examiners granting or denying the relief sought or challenged, and such portions of the record upon which the movant either relies or should reasonably assume the opposing party will rely.

(c) Each motion shall be accompanied by an affidavit setting forth fully the factual basis upon which the motion is founded.

(d) The moving party shall serve one copy of the moving papers on all other parties, and file with the Legal Committee an original and 17 copies thereof.

(e) Except as provided by N.J.A.C. 6:2-2.4, Emergency relief, an opposing party shall have 10 days after service of the movant's papers to serve and file the same number of papers in opposition. The opposing party's brief shall explain clearly the grounds for opposition, annexing any papers relied on that were not included in the moving party's appendix. If no opposing brief is filed, the State Board may consider the motion unopposed.

(f) Without leave of the Legal Committee, which may be applied for ex parte, supporting and answering briefs shall not exceed 15 pages, exclusive of table of contents and appendix.

(g) No other papers shall be filed by either party without leave of the Legal Committee.

(h) Unless otherwise directed by the State Board, there shall be no oral argument on motions.

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

**6:2-1.19 Relaxation of the rules**

The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration and elimination of unnecessary delay. Unless otherwise stated, any rule may be relaxed in any case by the State Board, in its discretion, if adherence to such rule would result in an injustice.

---

**SUBCHAPTER 2. MISCELLANEOUS PROCEEDINGS**
**6:2-2.1 Motion to appear as amicus curiae**

(a) A motion for leave to appear as amicus curiae shall state with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise with respect thereof.

(b) The State Board shall grant the motion if it is satisfied under all the circumstances that the motion is timely, that the applicant's participation will assist in the resolution of an issue of public importance, and that no party to the litigation will be unduly prejudiced thereby. The order granting the motion shall fix a briefing schedule.

(c) An amicus curiae who has been granted leave to appear in a case before the Commissioner may, without seeking further leave, file a brief and appear in an appeal taken to the State Board from the decision or order entered therein.

**6:2-2.2 Motion for stay of a decision of the Commissioner or State Board of Engineers**

(a) After the filing of a notice of appeal to the State Board from a determination of the Commissioner or Board of Examiners, a motion for stay shall be made first to the Commissioner or Board of Examiners.

(b) A motion for stay to the Commissioner or Board of Examiners shall be done by notice of motion with supporting affidavit, two copies of which shall be filed with the Commissioner or Board of Examiners and one copy served on each party to the action.

(c) The motion and affidavit shall set forth fully that portion of the Commissioner's or Board of Examiner's decision with respect to which a stay is sought, the factual basis on which the motion for stay is founded, and the reasons favoring the stay.

(d) Any party opposing the motion for stay shall file and serve within 10 days of service of such application an answering affidavit in the same manner, setting forth the reasons why the motion for stay should be denied.

(e) If the motion is denied by the Commissioner or Board of Examiners, motion for stay may be made to the State Board. If the motion is granted before the Commissioner, a motion to dissolve the stay may be made to the State Board.

**6:2-2.3 Motion for leave to appeal an interlocutory order, decision or action**

Motion for leave to appeal an interlocutory order, decision or action shall be made by filing a motion for leave to appeal to the State Board of Education within five days after the action or service of the interlocutory decision or order. Motion for leave to appeal shall conform to the requirements of N.J.A.C. 6:2-1.18, except that the brief in support of the motion shall also include the merits of the issues sought to be appealed. The respondent's answer shall be filed within 10 days of service of motion.

**6:2-2.4 Emergency relief**

(a) Where the Commissioner has granted or denied emergency relief pursuant to N.J.A.C. 1:1-12.6, a party may move for emergency relief before the State Board.

(b) Applications for emergency relief shall conform to the requirements of N.J.A.C. 6:2-1.18. Opposing parties shall be given opportunity under the circumstances to file papers in response to an application for emergency relief.

(c) Applications for emergency relief shall be considered on an expedited basis and as provided by N.J.A.C. 6:2-3.3.

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

**Case Notes**

High school student who did not achieve requisite number of credits was not entitled to emergency relief to participate in graduation ceremonies. *D.C. v. Board of Education of the Township of Parsippany Troy Hills*, 96 N.J.A.R.2d (EDU) 697.

High school student who did not achieve requisite number of credits was not entitled to emergency relief to attend his senior prom. *W.M.B. v. Woodbury District Board of Education*, 96 N.J.A.R.2d (EDU) 695.

Decision on petition for emergent relief in form of enjoining expulsion hearings was not res judicata with respect to due process claim. *M.G., on behalf of her minor child, K.G., Et Al. v. Board of Education of Monmouth Regional High School District*, 92 N.J.A.R.2d (EDU) 364.

**6:2-2.5 (Reserved)**

Repealed by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

Section was "Appeal from a decision of the Commissioner on school budget cap waiver applications".

**6:2-2.6 Issuance of an administrative order creating a State-operated school district**

(a) A recommendation made to the State Board by the Commissioner for the issuance of an administrative order creating a State-operated school district shall be deemed filed three days after the date of mailing to the respondent.

(b) The Commissioner shall certify the record upon which the recommendation is based and remit the record, so certified, together with two copies of the recommendation to the State Board within three days after the recommendation is filed.

(c) Within 10 days after the recommendation is filed, a respondent contesting the recommendation shall file a notice of intention to contest with the State Board of Education and with the Commissioner, identifying the recommendation and stating that the respondent intends to contest it. A notice filed on behalf of a district board of education shall have appended thereto a certification that the district board has authorized the filing of the notice by resolution of the district board adopted by roll call vote.

(d) Within 15 days after the filing of notice, the respondent shall file with the State Board an original and 17 copies of its exceptions to the recommendation, and shall serve one copy upon the Commissioner.

1. The exceptions shall specify the basis upon which the respondent contests the recommendation and shall include the respondent's argument, clearly and concisely stated, as to why the State Board should not issue an administrative order creating a State-operated school district.

2. Any transcript or exhibit admitted into evidence, or portion thereof, relied upon shall be specifically identified.

3. The respondent's exceptions may be in letter form, but shall not exceed 30 pages unless leave of the State Board has been obtained.

(e) Within 10 days after the respondent has filed its exceptions, the Commissioner may file a response not exceeding 30 pages, which shall specifically identify any transcript or exhibit admitted into evidence, or portion thereof, upon which the Commissioner relies in the response.

(f) No other papers shall be served or filed without leave of the State Board.

(g) Oral argument before the State Board, or a committee thereof, may be granted on request of the respondent made by a separate captioned paper filed concurrently with its exceptions, or, in the case of any recommendation, upon direction of the State Board.

(h) If no notice is filed as provided by (c) above, or exceptions are not filed within the 15 day period provided by (d) above, the decision of the State Board will be based solely on the record certified to it by the Commissioner.

(i) Except as otherwise provided, the rules included in this chapter are applicable to proceedings pursuant to this section.

(j) Determinations of the State Board made pursuant to this section shall be embodied in a written decision, which shall be certified to the Commissioner and simultaneously mailed to the respondent or its attorney of record.

(k) The decision of the State Board shall be deemed filed three days after the date of mailing.

#### **6:2-2.7 Motions for clarification and/or reconsideration of a State Board decision**

A motion for clarification and/or reconsideration shall be served and filed within 10 days after the State Board has filed its decision in the matter unless such time is enlarged by leave of the Legal Committee.

Amended by R.1998 d.37, effective January 5, 1998.  
See: 29 N.J.R. 4221(a), 30 N.J.R. 67(a).

### SUBCHAPTER 3. REVIEW AND DECISION

#### **6:2-3.1 Functions of the Legal Committee**

(a) The Legal Committee shall supervise the preparation of and make available to the State Board the entire record, and shall transmit to each member of the Board the basic documents in the case file, which shall include, but not be limited to:

1. The decision appealed from;
2. Appellant's brief, further memoranda and briefs; and
3. Respondent's answering brief, further memoranda and briefs.

(b) Except as otherwise provided, the Legal Committee shall have the authority to accelerate the time schedule established by this chapter, or to stay such time schedule on its own or motion of a party, as it deems necessary to insure that the proceedings are expeditious and that the interests of the parties are protected.

(c) After reviewing a given appeal, the Legal Committee shall report to the State Board at public meeting of the Board, recommending its conclusions.

(d) Prior to the consideration of a given appeal by the State Board, the Legal Committee may submit to the members of the State Board a written report setting forth its recommendations.

1. Whenever there is such a written report of the Legal Committee, it shall be mailed simultaneously to all parties or their attorneys of record, and opportunity for exceptions shall be provided pursuant to N.J.A.C. 6:2-1.17.

2. Each report, along with any exceptions, then shall be transmitted to each member of the State Board in advance of consideration of the matter by the Board.

Amended by R.1994 d.17, effective January 3, 1994.  
See: 25 N.J.R. 4548(b), 26 N.J.R. 198(b).

#### **6:2-3.2 Oral argument**

(a) Appeals to the State Board shall be considered without oral argument unless argument is directed by the Legal Committee or the State Board.

(b) Oral argument before the Legal Committee or before the State Board will be granted at the discretion of the Committee or the State Board only if the respective body is convinced that this procedure is necessary for a fair determination of the case.

(c) A party requesting oral argument shall make the request by filing a separate captioned paper within 10 days after service of the respondent's brief concisely presenting the reasons why oral argument is necessary.

(d) Even when reasons are proffered by a party, the Legal Committee and/or the State Board may deny a request for oral argument when not convinced that this procedure is necessary to make a fair determination of the case.

#### **6:2-3.3 Authority to decide applications for emergency relief**

The President of the State Board or, in the President's absence, the chairperson of the Legal Committee is authorized to decide on behalf of the State Board applications for emergency relief made pursuant to N.J.A.C. 6:2-2.4 unless the determination would constitute the final decision with respect to the controversy.

#### **6:2-3.4 Decision of the State Board**

(a) The State Board shall make final determinations with respect to each controversy by resolution at open public meeting.

(b) Each final determination of the State Board shall be embodied in a written decision, which shall be mailed to all parties or their attorneys of record.

(c) Decisions of the State Board shall be deemed filed three days after the date of mailing to the parties.