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

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.

Propriety 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, PO Box 500, Trenton, New Jersey 08625–0500.

(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).

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.

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.