

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.1991 d.57, effective January 11, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Chapter Expiration Date

Pursuant to Executive Order No. 22(1994), Chapter 24, Controversies and Disputes, expires on July 11, 1997. See: 26 N.J.R. 3783(a) and 3942(a).

Chapter Historical Note

All provisions of this chapter became effective prior to September 1, 1969. Revisions to this chapter became effective August 20, 1973 as R.1973 d.232. See: 5 N.J.R. 332(a). Further amendments became effective September 18, 1973 as R.1973 d.266. See: 5 N.J.R. 332(b). Further revisions became effective October 6, 1976 as R.1976 d.308. See: 8 N.J.R. 101(d), 8 N.J.R. 505(b). Further revisions became effective July 9, 1981 as R.1981 d.265. See: 13 N.J.R. 190(a), 13 N.J.R. 397(b), 13 N.J.R. 481(a). This chapter was readopted pursuant to Executive Order 66(1978) effective April 10, 1986, with amendments effective May 5, 1986 as R.1986 d.157. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a). Chapter 24 was readopted pursuant to Executive Order No. 66(1978) by R.1991 d.57, effective January 11, 1991. See: Source and Effective Date. See section levels for further amendments.

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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, CN 500, Trenton, New Jersey 08625.

(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*, 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.

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).

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. *Driggs 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. *Driggs 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.

(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 complaint.

(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 shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner.

(e) Failure to answer within the 20 day period from receipt of service shall result in a notice to the respondent directing an answer within 10 days of receipt. Further failure to respond shall result in a second notice which shall inform the respondent that unless an answer is received within 10 days of the receipt of said notice, each count in the petition of appeal shall be deemed admitted and the Commissioner shall render a decision by way of summary judgment.

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.

6:24-1.5 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 standard to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982).

(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. 6:24-1.4; 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 such application prior to any transmittal of the matter to the OAL for hearing. After transmittal to OAL, any motion for emergent relief shall be determined by the OAL. (See N.J.A.C. 1:1-12.6.)

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.

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).

6:24-1.6 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 his or her petition,

and any respondent may amend his or her answer, at any time and in any manner which the Commissioner deems fair and reasonable. Upon transmittal to the OAL, motions to amend a petition or answer shall be determined by the OAL. (See N.J.A.C. 1:1-6.2.)

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.

6:24-1.7 Permission to intervene

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 should be made to the OAL. Such requests are governed by N.J.A.C. 1:1-16.

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.

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.

6:24-1.8 Appearance pro se

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 persons as set forth in N.J.A.C. 1:1-5.

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.

6:24-1.9 Dismissal of petition

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

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.

Case Notes

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.*

6:24-1.10 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. Should the Commissioner retain the matter, procedures relating to pre-hearing conferences shall be governed by the rules of the OAL. (See N.J.A.C. 1:1-13.1.)

(b) Upon transmittal to the OAL, the conduct of the proceedings shall be governed by the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1.

(c) Determination relating to pre-hearing conferences, discovery and other procedural matters shall be made by the Commissioner or the ALJ, whoever is hearing the case.

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.

Case Notes

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).*

6:24-1.11 Oaths

The Commissioner or the ALJ, whoever is hearing the case, shall have authority to administer oaths and affirmations, examine witnesses and receive evidence, issue subpoenas, rule upon offers of proof, take or cause depositions to be taken whenever the ends of justice would be served thereby, regulate the course of the hearing, and dispose of procedural requests or similar matters.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added text "or the ALJ, whoever is hearing the case,".

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

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

Upper case titles and deleted N.J.A.C. cite.

6:24-1.12 Subpoenas

Subpoenas requiring the appearance of persons or the production of documents may be issued at the discretion of the Commissioner or the ALJ, whoever is hearing the case, upon request of any party. (See also N.J.A.C. 1:1-11.1.)

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted text "Any witnesses summoned . . . evidence is requested."

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

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

Case Notes

Application of former regulation to class action. *Rivera v. Bd. of Ed., Perth Amboy, Middlesex Cty., 1974 S.L.D. 226.*

6:24-1.13 Summary judgment

(a) Should the Commissioner determine to decide a motion for summary judgment prior to transmission to OAL such motion shall be subject to the following process:

1. If a statement of the material facts has been agreed upon by the parties and the Commissioner, or if the controversy is submitted solely upon a stenographic transcript of proceedings with the approval, or at the direction, of the Commissioner, or if for any other reason there are no issues of fact to be heard, the Commissioner shall require all parties to submit briefs on the matter. Such briefs shall be submitted within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. The Commissioner shall thereupon determine the matter on the basis of the total record before him or her.

2. At any time prior to transmittal to the OAL any party may move for summary judgment, which motion shall be decided by the Commissioner on the basis of conference stipulations, affidavits and briefs. The parties must submit said affidavits and briefs within the time fixed by the Commissioner in consultation with the parties and confirmed by a written directive. Applications for summary judgment made after transmittal to the OAL shall be subject to the provision of N.J.A.C. 1:1-12.5.

3. Unless otherwise ordered by the Commissioner, there shall be no oral argument in connection with a summary judgment action. If the Commissioner grants oral argument, it shall be limited to 30 minutes for each party and shall not include testimony of witnesses.

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).

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.

6:24-1.14 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 employees of the Departments of Human Services, Corrections or Education serving under tenure, shall be made by the Commissioner. Every such determination shall be embodied in a written decision which shall set forth the findings of fact and conclusions of law and an appropriate order pursuant to the provisions of N.J.A.C. 1:1-18.6.

(b) Any determination or decision of the Commissioner is appealable to the State Board of Education pursuant to N.J.A.C. 6:2-1; however, any decision of the Commissioner shall be binding unless and until reversed on appeal or a stay is granted by either the Commissioner or State Board pursuant to N.J.A.C. 6:2-2.2.

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).

6:24-1.15 Relaxing of rules

The rules herein contained shall be considered general rules of practice to govern, expedite and effectuate the procedure before, and the actions of, the Commissioner in connection with the determination of controversies and disputes under the school laws. They may be relaxed or dispensed with by the Commissioner, in his or her discretion, in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

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

Recodified from N.J.A.C. 6:24-1.17, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Discretionary waiver of limitations periods was not appropriate where petition was not filed in timely manner. 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.

Grant of extended sick leave within school board's discretion; no vested rights arise from such discretionary action. Adell v. Bd. of Ed., Fair Lawn Boro., Bergen Cty., 2 N.J.A.R. 327 (1980).

6:24-1.16 Awarding of interest

(a) The Commissioner pursuant to the criteria herein may award both pre-judgment and/or post-judgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

(b) "Interest" is defined as follows:

1. Pre-judgment interest is interest awarded for that period of time prior to the adjudication of the monetary claim.
2. Post-judgment interest is interest determined by the Commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. Pre-judgment interest shall be awarded by the Commissioner when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.
2. Post-judgment interest shall be awarded when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or could have been established and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) Rate of interest shall be awarded as follows:

1. Pre-judgment interest shall be awarded based upon the average rate of interest earned on investments by the party responsible for such payment during the period of time in which the monies awarded were illegally detained.
2. Post-judgment interest shall be awarded based upon the prevailing rate of interest established by court rules at the time that the right to the monetary claim was determined. (See New Jersey Court Rules, R. 4:42-11(a).)

New Rule R.1986 d.157, effective May 5, 1986. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a). 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. 6:24-1.18, stylistic changes.

Case Notes

Sufficiency of notice of required teacher's physical and mental examination (citing former regulation). Hoffman v. Jannarone, 401 F.Supp. 1095 (D.N.J.1975), affirmed in part, reversed in part and remanded 532 F.2d 746 (3rd Cir.1976).

Prejudgment interest was not required absent deliberate violation of compensation statute, bad faith or other improper motive. Bassett v. Board of Educ. of Borough of Oakland, Bergen County, 223 N.J.Super. 136, 538 A.2d 395 (A.D.1988).

Exception to decision filed under former N.J.A.C. 6:24-1.17 to correct inadvertent omission of teacher's certification from record. Blue v. Bd. of Ed., Jersey City, 2 N.J.A.R. 206 (1980).

SUBCHAPTER 2. DECLARATORY RULINGS

6:24-2.1 Petition for declaratory rulings

Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the Commissioner. The determination to entertain such petitions for declaratory judgments shall be within the sole discretion of the Commissioner. If upon receipt and review of the answer such request is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory judgment shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

Amended by R.1986 d.157, effective May 5, 1986. See: 18 N.J.R. 404(b), 18 N.J.R. 976(a). Added text "upon receipt and review of the answer." 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.

Case Notes

Student's First Amendment rights; restrictions on publication in school newspaper of R-rated movie reviews review and resolution by Commissioner of Education. Desilets on Behalf of Desilets v. Clearview Regional Bd. of Educ., 137 N.J. 585, 647 A.2d 150 (1994).

Existing regional district; change in established method of cost apportionment; approval by voters in each constituent municipality. In the Matter of the Special Election in Northern Burlington County Regional School District, 94 N.J.A.R.2d (EDU) 385.

Declaratory ruling on school board policy to limit employment of supplemental teachers; teachers and taxpayers; standing to challenge. Ridgewood Education Association v. Ridgewood Village Board of Education, 94 N.J.A.R.2d (EDU) 137.

Petition for declaratory judgment seeking a ruling that payroll deduction crediting method violated constitutional prohibition would be transmitted to Office of Administrative Law. Board of Educ. of the Tp. of Neptune v. Neptune Tp. Educ. Ass'n, 91 N.J.A.R.2d 29 (EDU).

Case Notes

Failure to raise affirmative defense of non-compliance with petition filing deadline; tolling of filing period. Fischbach v. Bd. of Ed., North Bergen, 7 N.J.A.R. 191 (1983), affirmed per curiam Docket No. A-5947-83 (App.Div.1984).

Declaratory judgment denied regarding seniority standards. Howley v. Ewing Twp. Bd. of Ed., 6 N.J.A.R. 509 (1982).

Remand for further findings of fact pertaining to reasons for filing of petition beyond 90 day limit and possible justification for relaxation of time 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).

Teachers associations have standing to contest awarding of service contract as their organizational rights and relationships will be affected by outcome of proceedings. New Jersey Education Assn. v. Essex Cty. Educational Services Commissions, 5 N.J.A.R. 29 (1981).

Administrators association has standing to seek declaratory ruling on evaluation deadline issue even though not a party to contract negotiations. Willingboro Administrators Assn. v. Willingboro Education Assn., 1 N.J.A.R. 327 (1980).

6:24-2.2 Format of petition for declaratory rulings

(a) The format of the petition for declaratory rulings follows:

CAPTION : BEFORE THE COMMISSIONER OF : EDUCATION OF NEW JERSEY : : PETITION FOR DECLARATORY : JUDGMENT

Petitioner, _____, residing at _____ hereby requests the Commissioner to render a declaratory judgment concerning the application of (N.J.S.A. 18A:____, N.J.A.C. 6:____) to the controversy which has arisen between petitioner and respondent who resides at _____ by reason of:

1. (Here set forth in appropriate paragraphs the specific allegations, and the facts supporting them, which constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of _____ and determine and declare _____

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)

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

Deleted slash and substituted or. Amended by R.1991 d.57, effective February 4, 1991. See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b). Reformatting.

6:24-2.3 Dissemination

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory judgment through the county superintendents of schools.

New Rule, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Denial of declaratory relief was proper. *River Dell Board of Education v. Canal*, 94 N.J.A.R.2d (EDU) 327.

SUBCHAPTER 3. ORDER TO SHOW CAUSE

6:24-3.1 Commissioner's order to show cause

(a) If in the course of supervising the schools, and following investigation, the Commissioner should become aware of violation(s) of the school laws in school districts which if true would entitle him or her to impose a sanction on his or her own initiative, he or she may accord the district board of education or any other party subject to the Commissioner's jurisdiction an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such board or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing and, where authorized by law, the right to a contested case hearing is independent of and in addition to this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1. Ordering alteration or abandonment of a school building (N.J.S.A. 18A:20-36);
2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2);
3. Withholding salaries of:
 - i. A county superintendent (N.J.S.A. 18A:7-4); and
 - ii. Any teaching staff member (N.J.S.A. 18A:29-4) who neglects or refuses to perform any duty lawfully imposed upon him or her until such time as he or she complies;
4. Suspending teachers' certificates for wrongful cessation of duties (N.J.S.A. 18A:26-10 and 18A:28-8);
5. Withdrawing approval of a vocational school (N.J.S.A. 18A:54-4), a private school (N.J.S.A. 18A:69-3, 69-5), or a private correspondence school (N.J.S.A. 18A:69-13).

(b) Submission by parties of orders to show cause seeking enforcement of litigants' rights shall not be deemed appropriate. Such actions are to be initiated by way of petition accompanied by motion for emergent relief pursuant to N.J.A.C. 6:24-1.2 and 6:24-1.5.

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).
Added new (b); provision prohibiting orders to show cause except by petition accompanied by motion.

SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

6:24-4.1 Withholding salary increment

Where a district board of education acts to withhold a teacher's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14 as modified by N.J.S.A. 34:13A-1, the teacher may file a formal petition of appeal for a hearing according to the procedures outlined in this chapter.

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 inserted new.
Amended by R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Added "based upon teaching performance" ...; added cite to modified statute.

Case Notes

Withholding increments due to weakness in classroom management was not unreasonable. *Harrity v. Keansburg Board of Education*, 94 N.J.A.R.2d (EDU) 376.

Recoupment of salary and/or adjustment increments; disciplined tenured teacher; subsequent salary freeze. *Cerato v. Newark Board of Education*, 94 N.J.A.R.2d (EDU) 248.

Chronic absenteeism of teacher; basis to withhold salary increments. *Kochman v. Keansburg Borough Board of Education*, 94 N.J.A.R.2d (EDU) 141.

Withholding salary increments for unsatisfactory performance was not arbitrary, capricious, or unreasonable. *Brown v. Jersey City School District*, 93 N.J.A.R.2d (EDU) 875.

Payment of salary increments neither mandated nor prohibited upon expiration of collective negotiations agreement. *Neptune Township Board of Education v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 791.

Increments withheld; unsatisfactory ratings and excessive absenteeism. *Faccone v. Board of Education of City of Jersey City*, 93 N.J.A.R.2d (EDU) 502.

Withholding teacher's employment and adjustment increment; not arbitrary or capricious. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 312.

Payment of increments following expiration of collectively negotiated salary schedule was governed by Employer-Employee Relations Act. *Board of Education of Township of Neptune v. Neptune Township Education Association*, 93 N.J.A.R.2d (EDU) 178.

Board of education under no obligation to return teacher whose increment was withheld to regular salary guide; *New Jersey Employer-Employee Relations Act*. *Fieseler v. South River Board of Education*, 93 N.J.A.R.2d (EDU) 136.

Increment withholding proceedings; inadequate record; remand. *Kesheneff v. Board of Education of Township of Holmdel*, 93 N.J.A.R.2d (EDU) 41.

Withholding adjustment increment not arbitrary; alleged procedural deficiencies in evaluation process. *Sturn v. Board of Education of Borough of South Plainfield*, 92 N.J.A.R.2d (EDU) 661.

Classroom management; withholding increment and salary adjustment reasonable. *Gnatt v. Board of Education of Manalapan-Englishtown Regional School District*, 92 N.J.A.R.2d (EDU) 589.

Withholding of teacher's increment; no abuse of discretion. *Brown v. Township of South Brunswick Board of Education*, 92 N.J.A.R.2d (EDU) 560.

Withholding of salary increment sustained; insensitivity and lack of compassion towards students. *Byorek v. Board of Education, Scotch Plains-Fanwood School District*, 92 N.J.A.R.2d (EDU) 511.

Withholding increment and salary increase; performance of teaching duties and alleged insubordination. *Backer v. Township of Roxbury Board of Education*. 92 N.J.A.R.2d (EDU) 441.

Withholding adjustment and employment increments; application of absenteeism policy. *Pollard v. Board of Education of Township of Teaneck*, 92 N.J.A.R.2d (EDU) 279.

Failure to show that decision to withhold increments and to place reprimand in file was unreasonable. *Zarro v. Board of Education of Paramus, Bergen County*, 92 N.J.A.R.2d (EDU) 145.

SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

6:24-5.1 Filing of written charges and certificate of determination

(a) In a case of charges preferred against an employee of a district board of education pursuant to the Tenure Employees' Hearing Act which are to be brought before the Commissioner, N.J.A.C. 6:24-1.2 (Filing and service of petition) shall not apply. In place of the usual petition, the district board of education shall file the written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

(b) In all instances of the filing and certification of tenure charges, other than for reasons of inefficiency, the following procedures and timelines shall be observed:

1. Charges shall be filed in writing with the secretary of the district board of education, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person or persons instituting such charges.

2. Charges along with the required sworn statement of evidence shall be transmitted to the affected tenured employee within three working days of the date they were filed with the secretary of the district board. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The affected tenured employee shall have an opportunity to submit to the district board of education a written statement of position and a written statement of evidence both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. Upon receipt of respondent's written statement of evidence under oath, or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary. (See N.J.S.A. 18A:6-11.)

5. The district board of education shall forthwith notify in writing the affected employee against whom the charge has been made of its determination, in person or by certified mail to the last known address of the employee.

6. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charge and the required certificate of determination with the Commissioner together with proof of service upon the employee.

7. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

(c) In the event that the tenure charges are charges of inefficiency, the following procedures and timelines shall be observed:

1. Initial charges of inefficiency must be filed with the secretary of the district board of education along with a statement of evidence in support thereof executed under oath.

2. The district board of education, through its board secretary, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. The district board of education, through its board secretary, shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal 90 day period, or any longer period provided by the board, it intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.

4. Concurrent with notifying the employee of such charges of inefficiency, the district board of education shall direct that there be a modification of the individual professional improvement plan mandated by N.J.A.C. 6:3-1.21(f) to assure that such plan addresses the specific charges of inefficiency and comports with the timelines established for correction.

5. Upon completion of the minimal 90 day period for improvement, or such longer period as may be provided by the district board of education, the administrator or administrators responsible for bringing such charges to the attention of the board shall notify the board in writing of what charges, if any, have not been corrected.

6. The district board of education upon receipt of the written notification shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal 90 day period, or such longer period as may be provided by the board, to the notification of the employee by the board shall not exceed 30 calendar days.

7. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within 15 days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.

8. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted 15 day time period, the district board of education shall determine by a majority vote of its full membership within 45 days whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary. (See N.J.S.A. 18A:6-11.)

9. In the event the district board of education finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then it shall file such written charges and the required certificate of determination with the Commissioner together with proof of service upon the employee.

10. All deliberations and actions of the district board of education with respect to such charges shall take place at a closed meeting.

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

Added (b)-(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.

Case Notes

Tolling of time to determine probable cause for dismissing tenured teacher during response time and for day of service. *Matter of Tenure Hearing of Cowan*, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Adequate certification of charges against tenured employee where document containing jurat was signed four days before secretary signed certification. *Matter of Tenure Hearing of Cowan*, 224 N.J.Super. 737, 541 A.2d 298 (A.D.1988).

Notice from school board; termination proceedings. *Jackson v. Englewood Board of Election*, 94 N.J.A.R.2d (EDU) 520.

Evidence established that it was reasonable for board of education to refuse to certify tenure charges. *Bey v. Board of Education of City of Newark*, 93 N.J.A.R.2d (EDU) 288.

6:24-5.2 Format of certificate of determination

(a) The certificate of determination which accompanies the written charges shall contain a certification by the district board of education secretary:

1. That the district board of education has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;

2. Of the date, place and time of the meeting at which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay;

3. That such determination was made by a majority vote of the whole number of members of the district board of education;

4. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

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.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

Issue of form over substance in remedying procedural defect. In re: *Tenure Hearing of Kizer*, 1974 S.L.D. 505.

6:24-5.3 Filing and service of answer to written charges

The filing and service of an answer to written charges pursuant to the Tenure Employees' Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

Case Notes

Review of procedure for bringing tenure charges; abstention by court not required. *Wichert v. Walter*, 606 F.Supp. 1516 (D.N.J.1985).

6:24-5.4 Filing and certification of charges against tenured employees in the Departments of Human Services, Corrections and Education

(a) The process for the filing and service of tenure charges against persons serving under tenure pursuant to N.J.S.A. 18A:60-1 within the Departments of Human Services, Corrections and Education other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6:24-5.1(b) except as herein noted. The charges shall be filed with the Director of Employee Relations in the Department of Human Services, the Director of the Office of Educational Services in the Department of Corrections or by an individual within the Department of Education designated by the Commissioner of Education. Any written statement of position submitted by the affected employee in response to said charges shall be filed with those individuals in the respective departments in the manner and time frame prescribed by N.J.A.C. 6:24-5.1(b).

(b) The Director of Employee Relations, the Director of the Office of Educational Services or individual designated by the Commissioner of Education shall, upon receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15 day time period, determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant dismissal or reduction of salary and shall notify the affected employee of his/her determination in writing in the manner prescribed by N.J.A.C. 6:24-5.1(b)5.

(c) In the event that the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education finds that probable cause exists and that the charges, if credited, warrant dismissal or reduction in salary, then he or she shall file such charges and the required certification with the Commissioner of Education together with proof of service upon the employee.

(d) In the event that the tenure charges are charges of inefficiency, the procedures and timelines to be followed shall be as prescribed by N.J.A.C. 6:24-5.1(c) except that receipt of all papers, required actions, transmissions, notifications, determinations and certifications prescribed by the aforesaid provision shall be the responsibility of the Director of Employee Relations for charges arising in the Department of Human Services, the Director of the Office of Educational Services for charges arising out of the Department of Corrections or the individual designated by the Commissioner of Education for charges arising out of the Department of Education.

(e) The certificate of determination which accompanies the written charges shall contain a certification by the Director of Employee Relations, the Director of the Office of Educational Services or the individual designated by the Commissioner of Education:

1. That the director or responsible person has determined that the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;
2. Of the date on which such determination was made and whether or not the employee was suspended and, if so, whether such suspension was with or without pay; and
3. In the case of a charge of inefficiency, that the employee was given at least 90 days' prior written notice of the nature and particulars of the alleged inefficiency.

(f) The filing and service of an answer to written charges pursuant to the Tenure Employees Hearing Act shall be performed in accordance with N.J.A.C. 6:24-1.4.

New Rule, R.1989 d.553, effective November 6, 1989.
See: 21 N.J.R. 1939(b), 21 N.J.R. 3461(a).

Case Notes

Termination; insubordination. In the Matter of the Disciplinary Hearing of McCargo, 94 N.J.A.R.2d (EDU) 524.

Tenured prison teacher's unauthorized correspondence with prison inmate; termination. In the Matter of the Tenure Hearing of Jacqueline Holmes-Williams, 94 N.J.A.R.2d (EDU) 447.

Board failed to prove that teacher engaged in conduct unbecoming a teacher. In the Matter of the Tenure Hearing of David C. Borrelli, 94 N.J.A.R.2d (EDU) 424.

Hitting students and making personal remarks to student; dismissal. In the Matter of the Tenure Hearing of Charles Talley, 94 N.J.A.R.2d (EDU) 395.

Award of benefits to tenure eligible teaching staff members retroactively applied. Trenton Education Association v. Trenton Board of Education, 94 N.J.A.R.2d (EDU) 328.

Termination of tenured teacher; cocaine. In the Matter of the Tenure Hearing of Caravello, 94 N.J.A.R.2d (EDU) 304.

Dismissal; sexually explicit discussions with students. In the Matter of the Tenure Hearing of Frank Roberts, 94 N.J.A.R.2d (EDU) 284.

Termination of nontenured custodian; harassing a female student. Hugg v. Pinelands Regional School District Board of Education, 94 N.J.A.R.2d (EDU) 279.

Resisting arrest and attempt to injure police officers; dismissal of teaching staff member. In the Matter of the Tenure Hearing of Henderck, 94 N.J.A.R.2d (EDU) 268.

Dismissal of tenured clerk; inadequacies which remained uncorrected despite 90 day remediation period. In the Matter of the Tenure Hearing of Carson, 94 N.J.A.R.2d (EDU) 250.

Tenured school principal's chronic and excessive absenteeism warranted termination. Camden School District v. Rucker, 94 N.J.A.R.2d (EDU) 190.

School counselor failed to establish by a preponderance of evidence that she was terminated on the basis of religion. Miller v. Holmdel Township Board of Education, 94 N.J.A.R.2d (CRT) 185.

Dismissal of custodian; drug testing protocols. In the Matter of the Tenure Hearing of Caravello, 94 N.J.A.R.2d (EDU) 163.

Abolition of position and demotion was not shown as arbitrary, capricious, unreasonable or otherwise unfair decision. Nuber v. Jersey City School District, 94 N.J.A.R.2d (EDU) 25.

Terminated employee was entitled to payment for accrued vacation. Lowe v. Orange City Board of Education, 93 N.J.A.R.2d (EDU) 789.

Dismissal of teacher as alcoholic not warranted. In the Matter of the Tenure Hearing of Howard, 93 N.J.A.R.2d (EDU) 788.

Dismissal of teacher was warranted for unbecoming conduct. In the Matter of the Tenure Hearing of Smith, 93 N.J.A.R.2d (EDU) 729.

Prison vocational teacher did not breach duty by bringing construction materials obtained from inmate's relatives into prison or by supplying keys to another inmate. In the Matter of the Tenure Hearing of Samano, 93 N.J.A.R.2d (EDU) 710.

Gross insensitivity and humiliation of students warranted loss of pay. In Matter of Tenure Hearing of Feinsod, 93 N.J.A.R.2d (EDU) 590.

Board of education reasonably accommodated alcoholic teacher; dismissal. State Operated School District of Jersey City v. Howard. 93 N.J.A.R.2d (EDU) 556.

Teacher's acquiring, possessing, and using stolen cars, as well as other misconduct, warranted dismissal. School District of Township of Irvington v. Smith. 93 N.J.A.R.2d (EDU) 526.

Teacher dismissed; marijuana grown at home. Board of Education of Willingboro v. Lott. 93 N.J.A.R.2d (EDU) 516.

Teacher's striking and pushing student warranted loss of pay. In Matter of Tenure Hearing of Boyd, 93 N.J.A.R.2d (EDU) 445.

Record established corporal punishment and other charges warranting termination of teacher. In Matter of Tenure Hearing of Harrell, 93 N.J.A.R.2d (EDU) 387.

Teacher's conduct and comments to students constituted unbecoming conduct; termination. School District of Flemington-Raritan Regional v. Gilson, 93 N.J.A.R.2d (EDU) 378.

Custodian's insubordination, neglect of duty and excessive absenteeism warranted termination. In Matter of Tenure Hearing of Riddick, 93 N.J.A.R.2d (EDU) 345.

Love letters sent to students; dismissal of teacher. In Matter of Tenure Hearing of Mantone, 93 N.J.A.R.2d (EDU) 322.

Procedural defects warranted dismissal of tenure proceedings. In Matter of Tenure Hearing of Beam, 93 N.J.A.R.2d (EDU) 320.

Incapacitating psychological difficulties; dismissal of teacher. In Matter of Tenure Hearing of McCoy, 93 N.J.A.R.2d (EDU) 297.

Record established conduct unbecoming superintendent of schools; termination. In Matter of Tenure Hearing of Horowitz, 93 N.J.A.R.2d (EDU) 232.

Insensitive utterances, inappropriate physical gestures and intimidation tactics of teacher in dealing with students; dismissal. Board of Education of Princeton Regional School District v. Campbell, 93 N.J.A.R.2d (EDU) 196.

Teacher's chronic and excessive absenteeism; removal. In Matter of Tenure Hearing of Kacprowicz, 93 N.J.A.R.2d (EDU) 147.

Developmental center teacher's striking of client; dismissal. In Matter of Tenure Hearing of Wagner, 93 N.J.A.R.2d (EDU) 143.

Absenteeism, abuse of prescription drugs, and drug test refusal; dismissal of teacher. In Matter of Tenure Hearing of Pellagatti, 93 N.J.A.R.2d (EDU) 121.

Record established that superintendent engaged in conduct unbecoming teaching staff member; dismissal. In Matter of Tenure Hearing of Romanoli, 93 N.J.A.R.2d (EDU) 82.

Teacher's substantiated screaming, verbal abuse and inappropriate discipline warranted monetary penalty and teacher training; no termination. Randolph Township Board of Education v. Dipillo, 93 N.J.A.R.2d (EDU) 13.

Chronic tardiness and excessive absenteeism constituted conduct unbecoming teacher; ongoing nature of conduct warranted dismissal. In Matter of Tenure Hearing of Meade-Stephens, 92 N.J.A.R.2d (EDU) 550.

School custodian's dishonesty; termination. In Matter of Tenure Hearing of Depasquale, 92 N.J.A.R.2d (EDU) 537.

Corporal punishment; loss of pay. Board of Education of City of New Brunswick v. Murphy, 92 N.J.A.R.2d (EDU) 527.

Teacher's erratic behavior and tolerance of sexual talk in class; dismissal. Morris School District Board of Education v. Brady, 92 N.J.A.R.2d (EDU) 410.

Punishment and abuse of students; dismissal of teacher. In Matter of Tenure Hearing of Courtney, 92 N.J.A.R.2d (EDU) 399.

Discretion to conduct inquiry into board of education election; inquiry warranted. In Matter Election Inquiry in School District of Township of Pennsauken, Camden County, 92 N.J.A.R.2d (EDU) 219.

Board of education election void; irregularities. In Matter of Annual School Election Held in Chesilhurst School District, 92 N.J.A.R.2d (EDU) 213.

Tenured school custodian; excessive absenteeism. Passaic Board of Education v. Viani, 92 N.J.A.R.2d (EDU) 76.

Patient elopement; suspension of psychiatric hospital teacher. New Jersey Department of Human Services, Greystone Park Psychiatric Hospital v. Pescatore, 92 N.J.A.R.2d (EDU) 8.

SUBCHAPTER 6. CONTESTED SCHOOL ELECTIONS

6:24-6.1 Request for recount or investigation

(a) Request for recount of the ballots cast or for an investigation of the procedures at a school election shall be in compliance with N.J.S.A. 18A:14-63.1 et seq. and need not conform with N.J.A.C. 6:24-1.2 (Filing and service of petition). Such request shall be in letter form addressed to the Commissioner and shall set forth with particularity the grounds on which the election results are contested.

(b) Request for inquiry into alleged violations of statutorily prescribed election procedures, pursuant to N.J.S.A. 18A:14-63.12, shall be in writing to the Commissioner.

(c) Hearings inquiring into alleged violations of statutorily prescribed election procedures shall be conducted pursuant to N.J.A.C. 1:1 by the Commissioner or an ALJ.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Old (b)-(d) repealed and new (b)-(c) substituted. 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.

Case Notes

Unsuccessful candidate's action against school board; improper expenditure of funds and presentation of budget. Mercer v. Brick Township Board of Education, 94 N.J.A.R.2d (EDU) 368.

Challenge candidacy for school board based upon defective nominating papers; timeliness. Rollins v. James P. Cardoneu, 94 N.J.A.R.2d (EDU) 357.

Claim affecting outcome of school board election was not barred by limitations; however, candidate failed to prove that irregularities required invalidation. In the Matter of the Deal Borough School Election, 93 N.J.A.R.2d (EDU) 769.

Petition for an additional school board election polling place was properly submitted. Schwieger v. East Windsor Regional Board of Education, 93 N.J.A.R.2d (EDU) 327.

The Commissioner of Education was without jurisdiction to adjudicate question presented under Open Public Meetings Act. Rovello v. Boyle, 93 N.J.A.R.2d (EDU) 313.

6:24-6.2 Cost of recounts

Cost of recounts shall be in compliance with N.J.S.A. 18A:14-63.6 and 63.7.

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.

6:24-6.3 Subpoenas

In any school election recount initiated pursuant to this subchapter, the Commissioner shall have the power to subpoena necessary witnesses to testify and to produce books, papers, documents and other objects designated in the subpoena.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Substituted "subchapter" for "act".

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.

6:24-6.4 Continuation of recheck

In districts where election machines have been used, the Commissioner shall ascertain from the party or parties applying for a recount which voting machines shall be rechecked. In the event that it shall appear during the course of the recheck that there has been a sufficient change in the tally of the votes cast to alter the result of the election, any candidate who appears then to have been defeated, or, in the event of a question, proposition or referendum, the parties in interest who may be affected adversely, may, within five days of such changed result, apply to the Commissioner to continue the recheck on his or her behalf upon the same terms and conditions under which the original recheck was held.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Added text "or her".

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.

6:24-6.5 Finding of error/relief

Where the Commissioner finds as a result of a recount or an inquiry that an error has occurred which alters the result of the election or that irregularities have occurred sufficient to influence the outcome, he or she shall order such relief as is appropriate.

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 changes only.

Case Notes

Board election and general fund proposition; recount of ballots. In the Matter of the Annual School Election Held in the Mahwah Township School District, Bergen County, 94 N.J.A.R.2d (EDU) 519.

Annual school election; unchanged upon recount. In the Matter of the Annual School Election Held in the School District of the Township of Willingboro, Burlington County, 94 N.J.A.R.2d (EDU) 519.

Annual school board election; recount of machine ballots. In the Matter of the Annual School Election Held in the Mount Laurel Township School District, Burlington County, 94 N.J.A.R.2d (EDU) 518.

Annual school election; recheck of election machines. In the Matter of the Annual School Election Held in the Middlesex County School Districts, 94 N.J.A.R.2d (EDU) 517.

Write-in ballots; candidates full name. In the Matter of the Annual School Election Held in the Oldmans Township School District, Salem County, 94 N.J.A.R.2d (EDU) 516.

Results unchanged; recount of ballots; school board election. In the Matter of the Annual School Election Held in the Morris Township School District, Morris County, 94 N.J.A.R.2d (EDU) 515.

Recount of votes for board membership. In the Matter of the Annual School Election Held in the School District of the Township of Mount Larvel, 94 N.J.A.R.2d (EDU) 440.

Recount of votes for board membership did not alter outcome. In the Matter of the Annual School Election Held in the School District of the Township of Willingboro, 94 N.J.A.R.2d (EDU) 440.

Recheck of election machines; school election. In the Matter of the Annual School Election Held in the School Districts of Middlesex County, 94 N.J.A.R.2d (EDU) 438.

Recount of votes; not alter outcome of election. In the Matter of the Annual School Election Held in the Pemberton Township School District, 94 N.J.A.R.2d (EDU) 435.

Recount of votes for board membership; not alter outcome. In the matter of Annual School Election Held in the Bridgewater-Raritan School District, 94 N.J.A.R.2d (EDU) 434.

Recount of votes for board membership; not change outcome. In the Matter of the Annual School Election Held in the Montville Township School District, 94 N.J.A.R.2d (EDU) 434.

Recount of votes for board membership. In the Matter of the Annual School Election Held in the City of Elizabeth School District, 94 N.J.A.R.2d (EDU) 433.

Absentee ballot had to be counted; no fraud evidenced. In the Matter of the Morris Hills Board of Education, 94 N.J.A.R.2d (EDU) 421.

Recount did not alter outcome of election for board membership. In the Matter of the Annual School Election Held in the West Paterson Borough School District, 94 N.J.A.R.2d (EDU) 420.

Recount of votes for board membership; no change. In the Matter of the Annual School Election Held in the Constituent District of Stafford Twp., 94 N.J.A.R.2d (EDU) 419.

Recount of votes for board membership; not alter outcome. In the Matter of the Annual School Election Held in Berkeley Township, 94 N.J.A.R.2d (EDU) 418.

Recount; board membership; tie broken. In the Matter of Annual Election Held in the Gibbsboro Borough School District, 94 N.J.A.R.2d (EDU) 417.

Recount of ballots cast for board membership. In the Matter of the Annual School Election Held in the School District of Garwood, 94 N.J.A.R.2d (EDU) 416.

Recount of ballots cast for General Fund proposition; no change. In the Matter of the Annual School Election Held in the School District of Garwood, 94 N.J.A.R.2d (EDU) 416.

Recount of ballots cast for board membership; no change. In the Matter of the Annual School Election Held in the Carlstadt East Rutherford School District, 94 N.J.A.R.2d (EDU) 415.

Recount of votes for board membership and General Fund proposition; did not alter outcome. In the Matter of Annual School Election Held in the Lower Camden County Regional School District, 94 N.J.A.R.2d (EDU) 414.

Recount of votes for General Fund proposition; no change. In the Matter of the Annual School Election Held in the Lawnside Borough School District, 94 N.J.A.R.2d (EDU) 413.

Recount of votes for General Fund proposition. In the Matter of the Annual School Election Held in the Cherry Hill School District, 94 N.J.A.R.2d (EDU) 413.

Recount of results; Board membership. In the Matter of the Annual School Election Held in the Frenchtown Borough School District, 94 N.J.A.R.2d (EDU) 412.

Tie-breaking absentee ballot was properly voided. In the Matter of the Annual School Election Held in the City of Cape May School District, 94 N.J.A.R.2d (EDU) 411.

Recount of ballots cast for Board membership and General Fund proposition; approval rather than disapproval for General Fund proposition. In the Matter of the Annual School Election Held in the Waterford Township School District, 94 N.J.A.R.2d (EDU) 410.

Recount of voting by machines; school election for General Fund proposition. In the Matter of the Annual School Election Held in the City of Passaic School District, 94 N.J.A.R.2d (EDU) 409.

Removal of elected member of school board; not a registered voter in the district. In the Matter of the Annual School Election Held in the School District of Old Bridge, 94 N.J.A.R.2d (EDU) 323.

Confusion of write-in voters did not invalidate election. In the Matter of the School Election Held in East Amwell Township, 93 N.J.A.R.2d (EDU) 878.

Alleged election irregularities were not shown to warrant new election. In Matter of Annual Newark School Board Election, 93 N.J.A.R.2d (EDU) 645.

Election irregularities were not shown to have thwarted will of people; no new election ordered. In Matter of Annual School Election Held in City of Egg Harbor, 93 N.J.A.R.2d (EDU) 635.

Board of education membership election recount; no change. In Matter of Special School Election Held in School District of Township of Edison, 93 N.J.A.R.2d (EDU) 611.

Board of education membership election recount; no change. In Matter of Annual School Election Held in Bridgewater-Raritan Regional School District, 93 N.J.A.R.2d (EDU) 611.

Election irregularity shown to have affected outcome of board of education election; new election. In Matter of Annual School Election Held in School District of Borough of Keansburg, 93 N.J.A.R.2d (EDU) 574.

Completion and certification of list of election board challengers; violation not warrant invalidating election. In Matter of School Election Held in School District of Borough of Fairview, 93 N.J.A.R.2d (EDU) 409.

Partisan political activity and board member acting as campaign manager; no election violation. In Matter of Annual School Election in School District of Township of Brick, 93 N.J.A.R.2d (EDU) 360.

Prospective candidate's use of his own signature on nominating petition; no emergent relief following rejection of petition. Darrow v. Board of Education of Borough of Brooklawn, 93 N.J.A.R.2d (EDU) 358.

School board election; no evidence that irregularities constituted fraud or interfered with election. Sickler v. Washington Borough School District, 93 N.J.A.R.2d (EDU) 341.

Execution of voter affidavits; no showing of effect on election outcome. In Matter of Special Election Held in Township of Millstone, 93 N.J.A.R.2d (EDU) 273.

Emergency placement for neurologically impaired child was not available absent evidence of irreparable harm. M.B. v. Manville, 93 N.J.A.R.2d (EDS) 233.

Public funds improperly used to promote political views and candidacy of incumbent school board members. Schettino v. Ridgefield Board of Education, 93 N.J.A.R.2d (EDU) 224.

Special election held more than the required statutory 70 days after voters elected to change governance of school district would be approved. In the Matter of the Special Election of the Edison Township School District, 93 N.J.A.R.2d (EDU) 171.

New school board election not ordered; no proof of illegality of voting by challenged voters or of how they voted. In Matter of Annual School Election Held in School District of Borough of Laurel Springs, 92 N.J.A.R.2d (EDU) 658.

Removal by store of campaign sign; no violation. In Matter of Annual School Election held in Jackson Township School District, 92 N.J.A.R.2d (EDU) 617.

Election irregularities did not warrant new election. In Matter of Annual School Election Held in School District of Township of Willingboro, 92 N.J.A.R.2d (EDU) 564.

Voter difficulties; not set aside election. In Matter of Annual School Election Held in School District of Borough of Waldwick, 92 N.J.A.R.2d (EDU) 520.

Alleged election violations did not affect outcome of school board election. In Matter of Annual School Election in Mainland Regional School District, 92 N.J.A.R.2d (EDU) 514.

School board election recount; no change. In Matter of Special School Election Held in School District of Borough of Laurel Springs, 92 N.J.A.R.2d (EDU) 513.

School board election irregularities; not invalidate results. In Matter of Annual School Election Held in School District of Township of Hainesport, 92 N.J.A.R.2d (EDU) 504.

School board election; irregularities warranted new election. In Matter of Annual School Board Election Held in Township of Hamilton, 92 N.J.A.R.2d (EDU) 476.

Anonymous postcard; violation of school election campaigning statute. In Matter of Annual School Election Held in Toms River Regional School District, 92 N.J.A.R.2d (EDU) 446.

Improper election procedures followed for filling vacant seats on board of education; write in candidate not entitled to seat; special election required. In Matter of Annual School Election Held in School District of Mullica Township, 92 N.J.A.R.2d (EDU) 432.

Board of education election; recount showed no change. In Matter of Annual School Election Held in School District of Township of Piscataway, 92 N.J.A.R.2d (EDU) 391.

Recount did not change board of education election outcome. In matter of annual school election held in school district of Township of Maple Shade, 92 N.J.A.R.2d (EDU) 388.

Recount did not change board of education election outcome. In matter of annual school election held in school district of Township of Lakewood, 92 N.J.A.R.2d (EDU) 387.

Recount did not change board of education election outcome. In matter of annual school election held in constituent district of Stafford Township, 92 N.J.A.R.2d (EDU) 386.

Recount did not change board of education election outcome. In matter of annual school election held in school district of Township of Eagleswood, 92 N.J.A.R.2d (EDU) 386.

Recount did not change board of education election outcome. Title in matter of annual school election held in school district of Township of Brick, 92 N.J.A.R.2d (EDU) 385.

There was no violation of election law nor thwarting of will of the voters, so as to warrant invalidation of school election. Matter of Annual School Election, Borough of Wanaque, 91 N.J.A.R.2d 6 (EDU).

Unsuccessful candidate failed to prove election irregularities; no election invalidation. Matter of the Annual School Election, Lacey Tp., 91 N.J.A.R.2d 3 (EDU).

SUBCHAPTER 7. BUDGET APPEAL RULES

6:24-7.1 Authority

Unless otherwise expressly noted, all provisions of this subchapter governing a petition by a district board of education appealing a board of school estimate's or a governing body's or bodies' decision to reduce a school budget have been prescribed by the Commissioner and approved by the State Board of Education pursuant to N.J.S.A. 18A:6-9, 18A:22-14, 18A:22-17, 18A:22-37, *Bd. of Ed., E. Brunswick Tp. v. Tp. Council, E. Brunswick*, 48 N.J. 94 (1966) and *Board of Education of Deptford Township v. Mayor and Council of Deptford Township*, 116 N.J. 305 (1989).

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Deleted "school board" and substituted "district board of education".

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

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

Added reference to board of school estimates and cite to statute and cases.

Administrative change.

See: 23 N.J.R. 1410(c).

6:24-7.2 Process for certifying the amount of tax levy

(a) In type I districts or type II districts having a board of school estimate, the following process for certifying the amount of tax levy necessary for school purposes shall be implemented.

1. On or before March 18, the board of school estimate shall fix and determine the amount of money necessary to be appropriated for use of the public schools for the ensuing school year pursuant to the provisions of N.J.S.A. 18A:22-14.

2. If the amount so appropriated shall be less than the amount proposed to the board of school estimate by the district board of education, the board of school estimate shall present to the district board of education, the municipal governing body or bodies and the county superintendent a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

3. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the board of school estimate has reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

4. The governing body of each municipality comprising a type I district or a type II district having a board of school estimate shall appropriate on or before April 28 the amount certified by the board of school estimate.

5. Should a municipal governing body or bodies certify an amount less than that appropriated by the board of school estimate pursuant to N.J.S.A. 18A:22-17, it or they shall provide the district board of education and the county superintendent those line items wherein reductions were effectuated and the supporting reasons for such reductions. The governing body or bodies shall further certify that the amount appropriated for school purposes is sufficient to ensure the provision of a thorough and efficient system of education.

(b) In type II districts the following process for certifying the amount of tax levy necessary for school purposes shall be implemented upon rejection of either or both the current expense and capital outlay budget by the voters of the district.

1. If voters reject the tax levy for either or both capital outlay and current expense at the annual school election, the district board of education shall supply to the governing body or bodies within two days from the defeat of the referendum the following information:

i. A complete line item budget listing each item by code and line description, including actual expenditures for the previous school year, actual budgeted amount for the current school year, proposed budgeted amount for the next school year (as submitted to the voters);

ii. Staff, numbers of professional and nonprofessional, during the current school year and projected staff for the next school year, with reasons for increase or decrease;

iii. Pupil enrollment by grade for the district as of June 30, preceding; October 15 preceding; and that projected for October of the next school year;

iv. Salary schedules for all employees;

v. Number of schools and classrooms in each;

vi. Tuition received or paid during the previous school year and anticipated for the current school year and the next school year;

vii. Advertised budget for the next school year; and

viii. If a capital budget is in dispute, a substantiation for each proposed capital project.

2. The governing body or bodies of the municipality or municipalities involved shall as soon as immediately practicable, consistent with N.J.S.A. 18A:22-37, consult with the district board of education for purposes of arriving at a tax levy sufficient to assure the provision of a thorough and efficient system of education.

3. By April 28th, the governing body or bodies shall certify to the county board of taxation an amount to be appropriated sufficient to provide a thorough and efficient system of education.

4. If the amount so appropriated shall be less than that which was submitted to the voters by the district board of education, the municipal governing body or bodies shall present to the board of education and the county superintendent of schools a revised line item budget which shall identify the specific line item reductions and the supporting reasons for each such reduction.

5. Accompanying the aforesaid revised line item budget and supporting reasons shall be a statement which shall certify that the governing body or bodies have reviewed the budget proposed by the district board of education and that the revised budget is sufficient to assure the provision of a thorough and efficient system of education.

New Rule, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).
Administrative change to (a)2 and 5.
See: 23 N.J.R. 1410(c).

6:24-7.3 Dispute resolution

(a) Upon receipt of the reduced line item budget and the supporting reasons for such reductions, the county superintendent shall schedule a conference which shall be attended by representatives of the district board of education and representatives of the municipal governing body or bodies for purposes of reaching agreement on a tax levy to be certified sufficient to provide a thorough and efficient system of education. The county superintendent shall not be precluded from initiating actions designed to assist the parties in resolving budgetary issues prior to formal action by the governing body or bodies.

(b) At said conference it shall be the responsibility of the county superintendent to review with the parties their respective positions relative to the line item reductions recommended by the governing body or bodies and/or the board of school estimate.

(c) If an agreement is reached between the parties at the conference to accept the reductions as certified and such agreement is approved by the county superintendent, no further action shall be required unless the district board of education has submitted a notice of intent to appeal or a petition of appeal in which case the parties shall submit a consent order to the Commissioner no later than 10 days from the conclusion of the conference.

(d) Should no agreement be reached settling the case at the conference, any agreement reached as to stipulation of facts or narrowing of differences shall be submitted to the Commissioner.

(e) Any agreement concluded between the district board of education and the governing body or bodies which results in a lower budget than approved by the county superintendent pursuant to N.J.S.A. 18A:7D-27 shall be submitted to the county superintendent for his or her approval in order to ensure that such reduction does not impair the district's

ability to provide a thorough and efficient system of education.

(f) Should the county superintendent, acting for the Commissioner, determine that the budget reduction agreed upon results in providing an amount less than that which is necessary to ensure a thorough and efficient system of education, the Commissioner shall issue an order to show cause directing the district board of education and governing body or bodies to show cause why the amount agreed upon is sufficient to ensure a thorough and efficient system of education.

New Rule, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

6:24-7.4 Time for filing petition

(a) Within 20 days after the certification by either the board of school estimate or the governing body in a type I district or the governing body or bodies in a type II district with a board of school estimate and within 15 days of the certification by the governing body or bodies in a type II district, the district board of education shall notify the governing body or bodies of its intent to appeal the reduction of the certification to the Commissioner of Education.

(b) A petition by a district board of education appealing the decision of its board of school estimate or its governing body or bodies to certify a tax levy less than that deemed necessary by the district board to insure a thorough and efficient educational program shall be taken no later than 30 days following the governing body's or bodies' decision.

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

Deleted "school board" and substituted "district board of education".
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. 6:24-7.2 and added timelines at new (a).

Case Notes

Duty of local boards to appeal municipal budgetary reductions that threaten deprivation of necessary staff and facilities. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

City's appeal from restoration of school board education budget was time-barred. Wallington Borough Board of Education v. Mayor and Council of Wallington Borough, 93 N.J.A.R.2d (EDU) 716.

6:24-7.5 Format and documentation of petition

(a) The format of the petition shall be the same as that set forth in N.J.A.C. 6:24-1.3.

(b) The district board of education shall attach to its petition a copy of a resolution adopted by a majority of its members authorizing the filing of such a petition and setting forth its reasons for doing so.

(c) The district board of education shall attach to its petition a copy of the following form:

Proposed tax levy adopted by the district board of education		Amount of tax levy certified by governing body or bodies	
Current expense	\$ _____	Current expense	\$ _____
Capital outlay	\$ _____	Capital outlay	\$ _____

Amount of reduction in the budget by governing body or bodies

Current expense	\$ _____
Capital outlay	\$ _____

Amount of reduction in dispute before the Commissioner

Current expense	\$ _____
Capital outlay	\$ _____

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Form was substantially amended.

Recodified from N.J.A.C. 6:24-7.3 by R.1991 d.57, effective February 4, 1991.

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

Stylistic changes.

Case Notes

Commissioner of education's review of budgetary reductions not precluded on failure of municipal governing body to file statement of reasons. Board of Educ. of Deptford Tp. v. Mayor and Council of Deptford Tp., 225 N.J.Super. 76, 541 A.2d 1080 (A.D.1988), certification granted 113 N.J. 333, 550 A.2d 449, judgment modified, affirmed and remanded 116 N.J. 305, 561 A.2d 589.

6:24-7.6 Filing and service of answer

The governing body or bodies shall file an answer with the Commissioner not later than 15 days after receiving the district board of education's petition.

Amended by R.1986 d.157, effective May 5, 1986.

See: 18 N.J.R. 404(b), 18 N.J.R. 976(a).

Amended "board's" to read "district board of education's".

Recodified from N.J.A.C. 6:24-7.4 by R.1991 d.57, effective February 4, 1991.

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

Stylistic changes.

N.J.A.C. 6:24-7.6 was formerly entitled "Conference of parties with county superintendent" 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).

(e) added.

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

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

6:24-7.7 Documentation of answer

(a) In conjunction with its answer, the governing body or bodies shall forward to the Commissioner a copy of the information which was given to the district board of education and the county superintendent at the time the reduction was made including the following documents:

1. A copy of the current expense line item budget detailing specific reductions that were effectuated by the governing body or bodies along with the statement of supporting reasons for each of the line item reductions;
2. A copy of the capital outlay budget detailing specific reductions that were effectuated along with a statement of supporting reasons for each of the line item reductions; and

3. Accompanying the foregoing shall be a certification stating the date on which the documents were originally given to the district board of education.

Recodified from N.J.A.C. 6:24-7.5, repealed and replaced by R.1991 d.57, effective February 4, 1991.

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

N.J.A.C. 6:24-7.7 was formerly entitled "Hearings" 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).

Repealed old 7.7 and recodified 7.8 with substantial amendments.

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

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

Administrative change to (a)1.

See: 23 N.J.R. 1410(c).

Case Notes

Statement of reasons to accompany reductions of school budget when municipality certifies reductions to county board of taxation. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Statement of reasons following rejection of proposed budget must be provided for any line-item reduction. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

6:24-7.8 Commissioner's review and decisions

(a) Within 20 days from the filing of the governing body's or bodies' answer to the district board of education's Petition of Appeal, the following submissions shall be filed with the Commissioner:

1. The governing body or bodies shall set forth its or their position in written form detailing by individual line item its or their reasons for effectuating the economies which represent the subject matter of the dispute. In so doing, the governing body or bodies shall provide sufficient detail based upon that data provided to it or them by the district board of education at the time of the budget defeat. Should the governing body or bodies fail to provide the district board of education with the specific line item reductions and the reasons for same, it or they shall bear the burden of demonstrating that its or their actions were not arbitrary or capricious.
2. The district board of education shall set forth its position in written form detailing by individual line item why the amount by which the governing body or bodies reduced the line item is necessary to meet the requirement of providing a thorough and efficient system of education.
3. Each party may, in addition to its written position, submit sworn affidavits from individuals whose input may be relevant to assisting the Commissioner in rendering a determination.
4. Within 10 days from receipt of the written position of the opposing party, each party may file responses to such positions.

5. Within five days of the receipt of the responses to each other's written positions or the expiration of the time period for filing responses, each party may submit to the Commissioner a final summation of its position.

6. Upon the receipt of the summaries submitted by the parties or the expiration of the time period for filing, the Commissioner shall review the total record before him or her and render a written decision which shall be a final decision unless or until reversed upon appeal.

7. Should the Commissioner find that there are material issues of fact to be determined, he or she may conduct an evidentiary hearing or transmit the case to the OAL for a hearing on all of the disputed issues that remain undecided.

New Rule, R.1991 d.57, effective February 4, 1991.
See: 22 N.J.R. 2841(a), 23 N.J.R. 297(b).

Case Notes

Stringent scope of review where voters have rejected school board's budget. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Commissioner may not lightly override a municipality's political concerns in reviewing school budget decisions. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Dismissal of municipality's answer too drastic a remedy for failure to timely file statement of reasons of budgetary reduction. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Decision on budget proposal should be based on constitutional standards and not merely on procedural grounds. Board of Educ. of the Tp. of Deptford v. Mayor and Council of the Tp. of Deptford, Gloucester County, 116 N.J. 305, 561 A.2d 589 (1989).

Cap waiver and budget restoration appeal dismissed; exhibits offered for consideration. Middleton Township Board of Education v. Middleton Township Committee, 94 N.J.A.R.2d (EDU) 307.

Cap waiver appeal properly dismissed; notice. Lyndhurst Township Board of Education v. Lyndhurst Township Board of Commissioners, 94 N.J.A.R.2d (EDU) 305.

Reallocation impossible prior to override. Rutherford Borough Board of Education v. Rutherford Borough Mayor and Council, 94 N.J.A.R.2d (EDU) 241.

School board budgetary election practices warranted corrective instruction. In the Matter of the Annual School Election Held in Old Bridge Township, 94 N.J.A.R.2d 230.

Mathematical miscalculation; restoration. Jefferson Township Board of Education v. Jefferson Township Council, 94 N.J.A.R.2d (EDU) 229.

Educational improvement plan requirements mandated partial restoration of budget. Garfield Board of Education v. Garfield Mayor and Council, 94 N.J.A.R.2d (EDU) 226.

Partial restoration of undefined reductions. Lyndhurst Township Board of Education v. Lyndhurst Township Board of Commissioners, 94 N.J.A.R.2d (EDU) 180.

Surplus discovered following audit; return of Level III corrective action plan funds. Orange Township Board of Education v. Department of Education, 94 N.J.A.R. 2d (EDU) 170.

Budget reductions for pupil transportation, teachers', administrative and advisors' salaries, and others; restored. Belleville Township Board of Education v. Belleville Township Mayor and Council, 94 N.J.A.R.2d (EDU) 134.

Restoration of certain line item reductions; cap waiver. Hackettstown Board of Education v. Hackettstown Mayor and Council, 94 N.J.A.R.2d (EDU) 128.

Funds were necessary and were restored. Carteret Borough Board of Education v. Carteret Borough Mayor and Council, 94 N.J.A.R.2d (EDU) 126.

Defeated budget and cap waiver were restored. South River Borough Board of Education v. South River Borough Mayor and Council, 94 N.J.A.R.2d (EDU) 110.

Defeated early childhood education budget was restored. Phillipsburg Town Board of Education v. Phillipsburg Town Council, 94 N.J.A.R.2d (EDU) 103.

Defeated budget was restored. Paterson City Council v. State-Operated School District of the City of Paterson, 94 N.J.A.R.2d (EDU) 98.

Defeated budget and cap waiver were restored. Millstone Township Board of Education v. Millstone Township Committee, 94 N.J.A.R.2d (EDU) 95.

Defeated budget and cap waiver were restored for preschool/kindergarten teachers' salaries but were sustained for nursing services. Bloomsbury Borough Board of Education v. Bloomsbury Borough Mayor and Council, 94 N.J.A.R.2d (EDU) 92.

Defeated cap waiver partially restored for teacher's salaries but not for the salaries of a full-time librarian and servicemaster. In the Matter of the Cap Waiver Appeal of the Stone Harbor Borough School District, 94 N.J.A.R.2d (EDU) 89.

Defeated budget and cap waiver were restored. Edgewater Borough Mayor and Council, 94 N.J.A.R.2d (EDU) 83.

Defeated budget and cap waiver were partially restored. Burlington City Board of Education v. Burlington City Common Council, 94 N.J.A.R.2d (EDU) 76.

Defeated budget and cap waiver were restored. Garwood Borough Board of Education v. Garwood Borough Mayor and Council, 94 N.J.A.R.2d (EDU) 73.

Defeated budget and cap waiver were restored. Middletown Township Board of Education v. Middletown Township Committee, 94 N.J.A.R.2d (EDU) 66.

Restoration of budgetary reduction was appropriate. Florence Township Board of Education v. Florence Township Council, 94 N.J.A.R.2d (EDU) 62.

Restoration of budgetary reduction was appropriate. Stafford Township Board of Education v. Stafford Township Council, 94 N.J.A.R.2d (EDU) 60.

Modification and partial adjustment of reduction were appropriate. Jefferson Township Board of Education v. Jefferson Township Council, 94 N.J.A.R.2d (EDU) 54.

Restoration of budgetary reduction was appropriate. Butler Borough Board of Education v. Butler Borough Mayor and Council, 94 N.J.A.R.2d (EDU) 51.

General fund tax levy of over \$15 million was required for the district to provide a thorough and efficient education. In the Matter of the School Budget of the Lower Camden County Regional High School District, 94 N.J.A.R.2d (EDU) 10.

Reduction in the tax levy was arbitrary and unreasonable. Woodbine Borough Board of Education v. Woodbine Borough Mayor and Council, 93 N.J.A.R.2d (EDU) 873.

Town council acted arbitrarily in deleting funds set aside for travel by school administrators and special education. Riverdale Borough Board

of Education v. Mayor and Council of the Borough of Riverdale, 93 N.J.A.R.2d (EDU) 867.

Reductions imposed by township council for administrative staff and equipment would be restored. Mahwah Township Board of Education v. Mahwah Township Mayor and Council, 93 N.J.A.R.2d (EDU) 865.

Levy reduction would be restored. Lower Alloways Creek Township Board of Education v. Lower Alloways Creek Mayor and Township Committee, 93 N.J.A.R.2d (EDU) 856.

Architectural fees and salaries for teachers, counselors, aides and custodians were necessary and budget requests would be restored. Jamesburg Borough Board of Education v. Jamesburg Borough Mayor and Council, 93 N.J.A.R.2d (EDU) 856.

School board's surplus balance was insufficient and budget request would be restored. Hamilton Township Board of Education v. Hamilton Township Mayor and Council, 93 N.J.A.R.2d (EDU) 854.

Restoration of salary and school bus cuts was necessary. Branchburg Township Board of Education v. Branchburg Township Committee, 93 N.J.A.R.2d (EDU) 851.

Funds cut for teacher salaries and retirement benefits would be partially restored but other reductions would be sustained. Belleville Township Board of Education v. Belleville Township Mayor and Council, 93 N.J.A.R.2d (EDU) 846.

Most of reduction in general fund tax levy of township would be restored. Neptune Township Board of Education v. Neptune Township Committee, 93 N.J.A.R.2d (EDU) 830.

Impact of reduction in salaries for counselors and in amount allocated for teaching supplies warranted restoration of funds cut. Mansfield Township Board of Education v. Mansfield Township Committee, 93 N.J.A.R.2d (EDU) 827.

Restoration of school budget was required. Lodi Borough Board of Education v. Lodi Borough Mayor and Council, 93 N.J.A.R.2d (EDU) 819.

Restoration of school budget funds for teachers and a school psychologist was necessary. Lindenwold Borough Board of Education v. Lindenwold Borough Council, 93 N.J.A.R.2d (EDU) 816.

Two town councils improperly imposed a wage freeze for non-teaching administrators and cut funds allocated for substance abuse counselors. Henry Hudson Regional School District Board of Education v. Atlantic Highlands Borough Mayor and Council, 93 N.J.A.R.2d (EDU) 813.

Budget cuts did not frustrate ability to provide a thorough and efficient education and town council adequately met and conferred prior to imposing the cuts. Berkeley Township Board of Education v. Mayor and Council of Berkeley Township, 93 N.J.A.R.2d (EDU) 811.

General fund tax levy increase was necessary despite rejection by the town's voters. In the Matter of the Cap Waiver Appeal of the Roosevelt Borough Board of Education, 93 N.J.A.R.2d (EDU) 776.

Cap waiver; \$291,189 shown to be necessary for provision of thorough and efficient education. In Matter of Cap Waiver Appeal of Board of Education of Borough of Moonachie, 93 N.J.A.R.2d (EDU) 662.

Cap waiver appeal funds for child study team, nurses and therapists, and transportation and utilities necessary for thorough and efficient education. In Matter of Cap Waiver Appeal of Board of Education of Borough of Seaside Heights, 93 N.J.A.R.2d (EDU) 644.

Cap waiver appeal; \$444,306 found to be necessary for thorough and efficient education. In Matter of Cap Waiver Appeal of Board of Education of Borough of Freehold, 93 N.J.A.R.2d (EDU) 639.

Cap waiver appeal; board proved necessity of \$1,092,411 of cap waiver funds. In Matter of Cap Waiver Appeal of Board of Education of Township of Ocean, 93 N.J.A.R.2d (EDU) 638.

Cap waiver appeal; board met burden of showing \$147,104 necessary to provide thorough and efficient education. In Matter of Cap Waiver Appeal of Board of Education of Borough of Netcong, 93 N.J.A.R.2d (EDU) 632.

Cap waiver appeal; \$271,649 of \$281,649 granted. In Matter of Cap Waiver Appeal of Board of Education of Borough of Alpine, 93 N.J.A.R.2d (EDU) 630.

Maximum permissible net budget; budget settlement funds restored following vote on tax levy. Board of Education of Township of Rochelle Park v. State Department of Education, 93 N.J.A.R.2d (EDU) 353.

Board of education met its burden for \$360,067 cap waiver funds. Board of Education of Borough of Lincoln Park v. Borough Council of Borough of Lincoln Park, 93 N.J.A.R.2d (EDU) 280.

Current expense cap waiver warranted; \$1,800,000. Board of Education of Township of Brick v. Township Council of Township of Brick, 93 N.J.A.R.2d (EDU) 99.

Current expense tax levy reductions; \$248,100 of \$254,100 restored. Board of Education of Borough of South Bound Brook v. Mayor and Council of Borough of South Bound Brook, 93 N.J.A.R.2d (EDU) 56.

Roof repairs; cap waiver funds. In Matter of Cap Waiver Appeal of Board of Education of Borough of Sayreville, 93 N.J.A.R.2d (EDU) 55.

Failure by borough to provide specific reasons for budget reductions; burden of proof; partial restoration of reductions warranted. Board of Education of Borough of Seaside Heights v. Mayor and Council of Borough of Seaside Heights, 93 N.J.A.R.2d (EDU) 51.

Budget and cap waiver appeals; record established need for part of funds. Board of Education of Township of Delanco v. Township Committee of Township of Delanco, 93 N.J.A.R.2d (EDU) 47.

Board of education failed to establish restoration of any budget levy reductions necessary. Board of Education of Northern Highlands Regional High School District v. Mayor and Council of Borough of Allendale, 93 N.J.A.R.2d (EDU) 43.

Evidence established entitlement to restoration of current expense tax levy and to additional CAP waiver monies. Board of Education of Borough of Ocean Gate v. Mayor and Council of Borough of Ocean Gate, 93 N.J.A.R.2d (EDU) 37.

Partial restoration of current expense budget levy reductions warranted. Board of Education of Township of Manchester v. Mayor and Council of Township of Manchester, 93 N.J.A.R.2d (EDU) 30.

Items within cap waiver appeal of \$110,243 necessary to provide thorough and efficient system of education; borough council failed to address such items. In Matter of Cap Waiver Appeal of Board of Education of Borough of Chesilhurst, 92 N.J.A.R.2d (EDU) 674.

Budget appeal; legal fees and other line item reductions restored. Board of Education of City of Beverly v. Board of School Estimate of City of Beverly, 92 N.J.A.R.2d (EDU) 653.

Capital outlay reduction restored; stairwell fire doors. Board of Education of Borough of Fairview v. Mayor and Council of Borough of Fairview, 92 N.J.A.R.2d (EDU) 651.

Waiver of \$183,258 approved. In Matter of Cap Waiver Appeal of Newfield Board of Education, 92 N.J.A.R.2d (EDU) 631.

Request for cap waiver monies granted; reopening of elementary school. In Matter of Cap Waiver Appeal of Northfield School District, 92 N.J.A.R.2d (EDU) 598.

Board of education proved that funds were necessary for thorough and efficient education; increases in tuition and back tuition adjustments. In Matter of Cap Waiver Appeal of Greenwich School District, 92 N.J.A.R.2d (EDU) 597.

Current expense funds restored; governing body had no objection to cap waiver appeal. In Matter of Cap Waiver Appeal of Kingwood School District, 92 N.J.A.R.2d (EDU) 596.

Inaccurate levy information provided electorate could not warrant new election. In Matter of Annual School Budget Election Held in Morris School District, 92 N.J.A.R.2d (EDU) 516.

State-operated school district budget appeal; city failed to show that any amounts included in budget were in excess of those required. Mayor and Council of City of Jersey City v. State-Operated School District of City of Jersey City. 92 N.J.A.R.2d (EDU) 461.

Board of education demonstrated cap waiver funds were necessary. In Matter of Cap Waiver Appeal of Richfield Park School District. 92 N.J.A.R.2d (EDU) 448.

Board of education met burden of showing that cap waiver funds were necessary. In Matter of Cap Waiver of South Orange-Maplewood School District. 92 N.J.A.R.2d (EDU) 445.

Capital outlay cap waiver monies restored for roof replacement. In Matter of Cap Waiver Appeal of Seaside Heights School District. 92 N.J.A.R.2d (EDU) 440.

Current expense budget item for transportation and cap waiver monies for staff and programs restored. Dennis Township Board of Education v. Township Committee of Township of Dennis. 92 N.J.A.R.2d (EDU) 437.

Board demonstrated that current expense tax levy sought was necessary. In Matter of Cap Waiver Appeal of Board of Education of Borough of Allenhurst. 92 N.J.A.R.2d (EDU) 436.

Board demonstrated current expense tax levy sought was necessary. In Matter of Cap Waiver Appeal of Alpine Borough Board of Education. 92 N.J.A.R.2d (EDU) 435.

Failure of governing body to provide written statement of reasons accompanying school budget reductions; burden of proof. Board of Education of Township of Rochelle Park v. Mayor and Council of Township of Rochelle Park, 92 N.J.A.R.2d (EDU) 425.

Restoration of all school budget levy reductions warranted. In Matter of Cap Waiver Appeal of Roselle Board of Education, 92 N.J.A.R.2d (EDU) 404.

Partial restoration of school budget levy reductions warranted. Board of Education of Pinelands Regional School District v. Township of Little Egg Harbor, 92 N.J.A.R.2d (EDU) 313.

Restoration of school budget levy reduction for people transportation warranted. Board of Education of the Pinelands Regional School District v. Townships of Little Egg Harbor, Eagleswood, Ocean County, Et Al, 92 N.J.A.R.2d (EDU) 128.

Restoration of school budget levy reductions warranted to pay tuition for enrollment of students in nearby district. Board of Education of Borough of Fieldsboro v. Mayor and Council of the Borough of Fieldsboro, Burlington County, 92 N.J.A.R.2d (EDU) 82.

Partial restoration of school budget levy reductions warranted of Law Relief. Board of Education of Township of Hamilton v. Council of Township of Hamilton Mercer County, 92 N.J.A.R.2d (EDU) 64.

Additional tax levy incurred expense for support of public school system ordered. Board of Education of Township of Belleville v. Mayor and Council of Township of Belleville Essex County, 92 N.J.A.R.2d (EDU) 59.

Partial restoration of school budget levy reductions warranted. Board of Education of Township of Ewing v. Mayor and Township Committee of Township of Ewing Mercer County, 92 N.J.A.R.2d (EDU) 55.

Partial restoration of school budget levy reductions warranted. Board of Education of the Township of Hillside v. Township Committee of the Townships of Hillside Union County, 92 N.J.A.R.2d (EDU) 47.

Partial restoration is school budget levy reductions warrant. Board of Education of the Borough of Woodbine v. Mayor and Council of Borough of Woodbine, Cape May County, 92 N.J.A.R.2d (EDU) 43.

Full restoration of school budget levy reduction warranted. Board of Education of Township of Lawrence v. Lawrence Township Council, Mercer County, 92 N.J.A.R.2d (EDU) 41.

Partial restoration of school budget levy reductions warranted. Board of Education of Township of Downe v. Downe Township Committee, Cumberland County, 92 N.J.A.R.2d (EDU) 36.

Partial restoration of school budget levy reductions warranted. Board of Education of the Borough of Ocean Gate v. Ocean Gate Borough Council, Ocean County, 92 N.J.A.R.2d (EDU) 33.

Entire amount budgeted for Outlay would be restored. Board of Educ. of the Borough of Bergenfield v. Mayor and Council of the Borough of Bergenfield, 91 N.J.A.R.2d (EDU) 160.

Partial restoration of reductions warranted. Board of Educ. of the Tp. of Cranford v. Mayor and Tp. Committee of the Tp. of Cranford, 91 N.J.A.R.2d (EDU) 155.

Reductions for various positions were fully restored. Board of Educ. of the Tp. of Manchester v. Mayor and Council of the Tp. of Manchester, 91 N.J.A.R.2d (EDU) 153.

Reduction in salary increases and elimination of various positions were arbitrary and capricious. Board of Educ. of the Borough of Wharton v. Borough Council of the Borough of Wharton, 91 N.J.A.R.2d (EDU) 151.

Reduction in proposed school budget would not be restored on grounds that budget as presented to voters was itself deficient. Board of Educ. of the Borough of Little Ferry v. Mayor and Council of the Borough of Little Ferry, 91 N.J.A.R.2d (EDU) 144.

Borough council had no authority to direct properties and to reduce proposed school budget. Board of Educ. of the Borough of Pallsades Park v. Mayor and Council of the Borough of Pallsades Park, 91 N.J.A.R.2d (EDU) 141.

Reductions for foreign language teacher student activities salaries and expenses, and special education teacher restored; reductions for school nurse and secretarial salaries sustained. Board of Educ. of the Borough of Rockaway v. Borough Council of the Borough of Rockaway, 91 N.J.A.R.2d (EDU) 139.

Mayor and borough council lacked power to reduce current expense appropriation through application of a surplus free balance. Board of Educ. of the Borough of Ramsey v. Mayor and Council of the Borough of Ramsey, 91 N.J.A.R.2d (EDU) 133.

Reductions in proposed school budget would be partially restored. Manalapan-Englishtown Regional School Dist. v. Mayor and Council of the Borough of Englishtown, 91 N.J.A.R.2d (EDU) 124.

Reduction in proposed budget left board of education with insufficient funds and would be set aside. Board of Educ. of the Borough of Allenhurst v. Mayor and Com'rs of the Borough of Allenhurst, 91 N.J.A.R.2d (EDU) 123.

Partial restoration of reductions for employee benefits, equipment and tuition were necessary; travel reduction and state unemployment insurance reduction sustained. Board of Educ. of the Town of Newton v. Town Council of the Town of Newton, Sussex County, 91 N.J.A.R.2d (EDU) 117.

Partial restoration of current expense and outlay reductions in proposed school budget was necessary. Board of Educ. of the Matawan-Aberdeen Regional School Dist. v. Mayor and Council of the Borough of Matawan and Mayor and Council of the Tp. of Aberdeen, 91 N.J.A.R.2d (EDU) 109.

Partial restoration of appropriations for heat, water and sewer, electricity, and various other expenses was necessary. Board of Educ. of the Borough of Somerdale v. Mayor and Council of the Borough of Somerdale, 91 N.J.A.R.2d (EDU) 106.

Employee salaries could not be reduced where set by negotiated public contracts. Board of Educ. of the Borough of Freehold v. Mayor and Council of the Borough of Freehold, Monmouth County, 91 N.J.A.R.2d (EDU) 105.

Reductions for school principal, school nurse and special education would be restored to school budget, along with outlay expenditures for carpeting. Board of Educ. of the Borough of Netcong v. Borough Council of the Borough of Netcong, 91 N.J.A.R.2d (EDU) 90.

Restoration of reduction in current expense cost for school district salaries, surplus, and various other expenses was necessary. Board of Educ. of the Borough of New Milford v. Borough Council of the Borough of New Milford, 91 N.J.A.R.2d (EDU) 87.

Partial restoration of line item reductions was necessary. Board of Educ. of the Borough of Lindenwold v. Borough Council of the Borough of Lindenwold, 91 N.J.A.R.2d (EDU) 65.

Restoration of \$45,000 for administrative salaries; \$40,000 cut from tuition and \$110,000 reallocation from surplus sustained. Board of Educ. of the Tp. of Rochelle Park v. Mayor and Council of the Tp. of Rochelle Park, 91 N.J.A.R.2d (EDU) 62.

Repainting project would be fully restored to budget and reduction to current expense for administration, instruction and other services would be partially restored. Board of Educ. v. Township Council of Teaneck, 91 N.J.A.R.2d (EDU) 33.

Cuts in school district's proposed budget were restored. Board of Educ. of Fairfield v. Township Committee of Fairfield, 91 N.J.A.R.2d (EDU) 23.

Board of Education did not demonstrate that a \$15,000 reduction for heating cost and a \$200,000 reduction in its surplus allocation would impede provision of a thorough and efficient education. Board of Educ. of Oakland v. Mayor of Oakland, 91 N.J.A.R.2d (EDU) 21.

Restoration of salary increases and insurance premium payments were necessary. Bradley Beach Borough Board of Education v. Bradley Beach Borough Mayor and Council, 83 N.J.A.R.2d (EDU) 888.

6:24-7.9 through 6:24-7.12 (Reserved)

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