

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

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

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

Recodified and amended from 1.10. The original section 1.9 was "Conference of counsel" and was repealed.

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

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

Stylistic changes.

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

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

Rewrote the section.

#### Case Notes

Nontenured employee's appeal from nonrenewal of employment could not result in a favorable finding despite procedural deficiencies and was dismissed. *Gillison v. Newark Board of Education*, 95 N.J.A.R.2d (EDU) 157.

Dismissal of petition due to delay and failure to comply with conference requirements. *Mangieri v. Bd. of Ed., Carteret Boro., Middlesex Cty.*, 1974 S.L.D. 644, 1975 S.L.D. 1100.

Written submissions and pre-hearing conference. *Bd. of Ed., Haledon Boro. v. Mayor and Council, Haledon Boro., Passaic Cty.*, 1974 S.L.D. 712.

#### 6A:3-1.11 Hearing

(a) Upon the filing of the petition and answer(s) in a contested case, the Commissioner may either retain the matter for hearing directly and individually, designate an Assistant Commissioner to hear and decide the case directly and individually or transmit the matter for hearing before the OAL. All hearings, whether a matter is retained by the Commissioner or transmitted to the OAL, shall be conducted in accordance with the rules of the OAL.

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

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

Old text deleted and new text substituted.

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

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

Permitted the designation of an Assistant Commissioner to hear and decide the case.

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

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

Rewrote the section.

#### Case Notes

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

Decision of school board to expel student for physically assaulting teacher was neither arbitrary, unreasonable, nor capricious. *K.O.H. v.*

*Edison Board of Education*, 95 N.J.A.R.2d (EDU) 275, affirmed 96 N.J.A.R.2d (EDU) 445.

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

Petitioner is entitled to evidentiary hearing on question of whether state of mind was such as to render resignation from position involuntary, warranting relaxation of 90-day time-bar. *Brunnquell v. Bd. of Educ. of Scotch Plains-Fanwood*, 11 N.J.A.R. 499 (1987).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.11. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

Adjournments and scheduling of tenure hearing proper under former N.J.A.C. 6:24-1.19; good and sufficient reasons for adjournment include court appearances, counsel vacationing out of county, unavailability of witnesses and conflicting counsel schedules. *Hunterdon Cty. School District Bd. of Ed. v. McCormick*, 1 N.J.A.R. 231 (1980).

#### 6A:3-1.12 Summary decision

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

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

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

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

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

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

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

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

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

Substantially amended.

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

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

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

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

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

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

Old text deleted and new substituted.

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

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

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

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

Rewrote the section.

#### Case Notes

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

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

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

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

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

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

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

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

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

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

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

#### 6A:3-1.14 Written decision

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

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

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

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

Deleted (b)-(e).

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

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

Recodified from N.J.A.C. 6:24-1.16, new (b) added.

N.J.A.C. 6:24-1.14 was formerly rules entitled "Stenographic transcript" and the following annotations pertain to that rule:

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

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

Deleted "either party may . . . such stenographic transcript."

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

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

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

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

Rewrote the section.

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

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

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

(b) Any party may make a motion for reconsideration or clarification of the Commissioner's decision within 30 days of the filing of the Commissioner's decision.

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

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

i. Claim(s) of mistake;

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

iii. Misrepresentation or other misconduct of an adverse party; or

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

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

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

(d) The filing of a motion for clarification or reconsideration shall not, in and of itself, relieve the parties from compliance with any judgment or order of the Commissioner.

(e) The filing of a motion for clarification or reconsideration shall not, in and of itself, alter the filing date of the Commissioner's decision for purposes of appeal.

(f) All papers filed in conjunction with motions for stay, reconsideration or clarification shall be submitted in original form with two copies.

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

#### 6A:3-1.16 Relaxing of rules

The rules in this chapter 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. Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL, 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).

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

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

Substituted "in this chapter" for "herein contained" following "rules" in the first sentence, and inserted "Where such rules do not reflect a specific statutory requirement or an underlying rule of the OAL," at the beginning of the second sentence.

#### 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).

#### 6A:3-1.17 Awarding of interest

(a) The Commissioner may, pursuant to the criteria of this section, award prejudgment and/or postjudgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

1. Any petitioner seeking award of prejudgment interest shall propose, before the Commissioner or the ALJ, whoever is hearing the case, an interest calculation consistent with (c) below.

(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. The Commissioner shall award prejudgment interest 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. The Commissioner shall award postjudgment interest 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) The rate of interest for the awarding of prejudgment and postjudgment interest shall equal the average rate of return, to the nearest one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury.

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.

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

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

Rewrote the section.

#### Case Notes

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

#### 6A:3-2.1 Petition for declaratory ruling

(a) Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities and status

arising from any statute or regulation within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

1. A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts which are future, contingent, uncertain or disputed.

(b) Except that the format of the petition shall be as set forth in this subchapter, the rules pertaining to filing, service and answer of petitions as set forth in this chapter shall apply to petitions for declaratory ruling.

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.

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

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

Rewrote the section.

#### Case Notes

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).

School board employee's contract dispute outside of Commissioner's jurisdiction. *Smith v. Willingboro Township, Burlington County*, 97 N.J.A.R.2d (EDU) 205.

Conviction on plea of guilty to criminal sexual conduct did not warrant automatic forfeiture of public position without first affording tenured custodian a full hearing in which to reveal mitigating circumstances. *Bergenfield Board of Education v. Efferen*, 95 N.J.A.R.2d (EDU) 304, on remand 95 N.J.A.R.2d (EDU) 457.

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).

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).

#### 6A:3-2.2 Format of petition for declaratory ruling

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

: BEFORE THE COMMISSIONER OF  
: EDUCATION OF NEW JERSEY

CAPTION

:  
: PETITION FOR DECLARATORY  
: RULING

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

1. (Here set forth in as many itemized paragraphs as are necessary 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  
representative

Date: \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.  
2. I have read the petition and aver that the facts contained herein are true to the best of my knowledge and belief.

\_\_\_\_\_  
Signature of Petitioner

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

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

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