

**EDUCATION**

**STATE BOARD OF EDUCATION**

**Controversies and Disputes**

**Proposed Readoption with Amendments: N.J.A.C. 6A:3**

**Proposed New Rule: N.J.A.C. 6A:3-5.7**

Authorized By: New Jersey State Board of Education, Kimberley Harrington, Acting Commissioner, Acting Secretary.

Authority: N.J.S.A. 18A:6-9 and 10; 18A:7-4; 18A:7A-15 and 42.a(3); 18A:7F-9 and 12; 18A:11-3; 18A:12-29; 18A:20-36; 18A:26-10; 18A:28-8; 18A:29-4 and 14; 18A:33-2; 18A:38-1 and 13; 18A:39-28 et seq.; 18A:54-4; and 18A:60-1; and P.L. 2007, c. 260, and P.L. 2012, c. 26.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2017-050.

Submit written comments by June 2, 2017, to:

Diane Shoener

Director, State Board Office

New Jersey Department of Education

100 River View Executive Plaza

PO Box 500

Trenton, New Jersey 08625-0500

E-mail: [chapter3@doe.state.nj.us](mailto:chapter3@doe.state.nj.us)

The agency proposal follows:

## Summary

The Department of Education (Department) proposes to readopt with amendments N.J.A.C. 6A:3, Controversies and Disputes. In accordance with N.J.S.A. 52:14B-5.1, the chapter was scheduled to expire on April 23, 2017. As the Department filed this notice with the Office of Administrative Law prior to that date, the expiration date is extended to October 20, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

This chapter sets forth the rules of procedure established by the Department for the filing of petitions with the Commissioner of Education (Commissioner) to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9. The chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes: 1) the filing of tenure charges pursuant to N.J.S.A. 18A:6-10 et seq.; 2) the termination of sending-receiving relationships pursuant to 18A:38-13; 3) appeals from decisions of the New Jersey State Interscholastic Athletic Association pursuant to N.J.S.A. 18A:11-3; 4) denials of entitlement to attend school pursuant to N.J.S.A. 18A:38-1; 5) review of penalties recommended by the School Ethics Commission pursuant to N.J.S.A. 18A:12-29; and 6) hearings prior to suspension or revocation of school bus driver endorsements pursuant to N.J.S.A. 18A:39-28 et seq.

The procedures set forth in the rules proposed for readoption with amendments remain substantially the same as previous rules. Unless otherwise noted in this Summary, all proposed amendments are to update Administrative Code citations or for clarity and stylistic or grammatical improvement.

The following summarizes the chapter and the proposed amendments:

## **Subchapter 1. General Provisions**

### **N.J.A.C. 6A:3-1.1 Purpose and scope**

This section sets forth the general purpose and scope of the chapter.

The Department proposes an amendment to N.J.A.C. 6A:3-1.1(b)1, which currently states the chapter establishes special rules for the filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through 17, to amend the last reference to N.J.S.A. 18A:6-17.5, Determination of certain tenure charges. The proposed amendment is necessary due to changes required by P.L. 2012, c. 26.

### **N.J.A.C. 6A:3-1.2 Definitions**

This section defines terms used throughout the chapter.

The Department proposes an amendment to the definition of "State district superintendent" to delete the word "full" in reference to State intervention. The definition, as proposed for amendment, will state: "'State district superintendent' means the superintendent of a school district under State intervention, as appointed or retained pursuant to N.J.S.A. 18A:7A-3 et seq."

This proposed amendment is necessary for clarification.

### **N.J.A.C. 6A:3-1.3 Filing and service of petition**

This section prescribes the procedures for filing a petition of appeal initiating a contested case before the Commissioner.

The Department proposes an amendment at N.J.A.C. 6A:3-1.3(g), which requires records related to any petition or tenure charges filed pursuant to N.J.A.C. 6A:3-5 involving allegations of child abuse or neglect reported to or investigated by the Department of Children and Families (DCF) to be sealed to the extent necessary, to insert "or arbitrator" after "pending further action by the ALJ" and to delete "at the OAL" after "subsequently assigned." The proposed amendments

are necessary for clarity and to reflect changes required by P.L. 2012, c. 26.

#### **N.J.A.C. 6A:3-1.4 Format of petition of appeal**

The section prescribes the format for preparing a petition of appeal.

The Department proposes an amendment at N.J.A.C. 6A:3-1.4(a), which sets forth the requirements for the contents of a petition of appeal, to add the following language to the petition: “whose telephone number is \_\_\_\_\_, fax number is \_\_\_\_\_ and email address is \_\_\_\_\_.” The proposed amendment is necessary to provide a place in the petition to include this information.

The Department proposes an amendment at N.J.A.C. 6A:3-1.4(b), which describes how pro se petitions will be handled, to delete the following in the first sentence: “, and such petitioner shall be notified of any material deficiencies which shall be remedied before the matter can proceed.” The Department also proposes to combine the last sentence of N.J.A.C. 6A:3-1.4(b) and paragraph (b)1, which state where a petition does not meet minimal standards regarding parties, allegations, or relief sought, the petitioner shall be sent a letter noting the date of the submission's receipt and identifying the deficiencies deemed to constitute substantial noncompliance. The Department further proposes to add the following at the end of the combined regulation: “The matter will not be filed until the noted deficiencies are corrected.” The proposed amendments are necessary to explain the filing process to pro se petitioners and to ensure the efficient filing and processing of petitions.

#### **N.J.A.C. 6A:3-1.5 Filing and service of answer**

The section prescribes the filing and content requirements for an answer to a petition.

The Department proposes an amendment at N.J.A.C. 6A:3-1.5(f)1, which describes the process for requesting an extension of time to answer, to replace “are encouraged to secure” with “shall seek.” The proposed amendment changes the requirement for seeking an adversary’s consent from discretionary to mandatory. The proposed amendment is necessary to clarify the requirements and to reflect current procedures.

#### **N.J.A.C. 6A:3-1.6 Emergent relief or stay**

This section prescribes the requirements for the filing and disposition of motions for emergent relief.

#### **N.J.A.C. 6A:3-1.7 Amendment of petition and answer**

This section prescribes the parties' right to file amendments to pleadings.

#### **N.J.A.C. 6A:3-1.8 Permission to intervene or participate**

This section prescribes the procedures and standards by which interested persons or entities may apply to intervene or participate in a contested case.

#### **N.J.A.C. 6A:3-1.9 Appearance and representation**

This section provides that parties to contested cases may represent themselves, or be represented consistent with applicable OAL rules.

#### **N.J.A.C. 6A:3-1.10 Dismissal or transfer of petition**

This section authorizes the Commissioner to dismiss a matter prior to transmittal to the OAL under certain conditions.

#### **N.J.A.C. 6A:3-1.11 Hearing**

This section prescribes the Commissioner's authority to hear a matter directly, assign it to an assistant commissioner, or transmit it to the OAL.

The Department proposes an amendment to add at the end of the section: “[t]his section does not apply to tenure matters governed by P.L. 2012, c. 26.” The proposed amendment is necessary for clarity and to reflect changes required by P.L. 2012, c. 26.

#### **N.J.A.C. 6A:3-1.12 Summary decision**

This section prescribes the procedure for submission and hearing of motions for summary decision.

#### **N.J.A.C. 6A:3-1.13 Settlement or withdrawal of contested matter**

This section prescribes the procedures for settling or withdrawing a contested case.

#### **N.J.A.C. 6A:3-1.14 Written decision**

This section provides for Commissioner determinations to be embodied in written decisions meeting the standards set forth in applicable rules of the OAL.

The Department proposes an amendment at N.J.A.C. 6A:3-1.14(a), which requires the Commissioner to make every determination of a controversy or dispute arising under 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. The Department proposes to replace “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” with “except charges against a district board of education employee, an employee of a State agency, or employees of charter schools who are accorded tenure under the school law.” The proposed amendment reflects changes required by P.L. 2012, c. 26.

#### **N.J.A.C. 6A:3-1.15 Motion for stay, reconsideration or clarification**

This section establishes procedures and standards for filing and adjudication of motions for stay, reconsideration, or clarification of Commissioner's decisions.

### **N.J.A.C. 6A:3-1.16 Relaxing of rules**

This section authorizes the Commissioner to relax any rule within this chapter that is not based on specific statutory or OAL requirements, in cases where the Commissioner determines that strict adherence to such rule would be inappropriate, unwarranted, or likely to result in injustice.

### **N.J.A.C. 6A:3-1.17 Awarding of interest**

This section authorizes the Commissioner to award prejudgment and postjudgment interest, and establishes the standards, rates, and method of application for such awards.

## **Subchapter 2. Declaratory Rulings**

### **N.J.A.C. 6A:3-2.1 Petition for declaratory ruling**

This section prescribes the requirements for the filing of requests for declaratory ruling, as well as the Commissioner's discretion to entertain or reject such requests.

### **N.J.A.C. 6A:3-2.2 Format of petition for declaratory ruling**

This section prescribes the format for preparing a petition for declaratory ruling.

The Department proposes an amendment at N.J.A.C. 6A:3-2.2(a) to require petitioners to provide fax numbers, phone numbers, and e-mail addresses. The proposed amendment adds the

following language to the petition: “whose telephone number is \_\_\_\_\_, fax number is \_\_\_\_\_ and email address is \_\_\_\_\_.” The proposed amendment is necessary to provide a place in the petition for declaratory ruling to include this information.

### **N.J.A.C. 6A:3-2.3 Dissemination of declaratory rulings**

This section requires the Commissioner to disseminate declaratory rulings through the executive county superintendents.

### **Subchapter 3. Order to Show Cause**

#### **N.J.A.C. 6A:3-3.1 Commissioner's order to show cause**

This section prescribes the circumstances under which the Commissioner may issue an order to show cause. The Department proposes an amendment at N.J.A.C. 6A:3-3.1(a)6, to add “partial or.” The proposed amendment is necessary for clarity.

### **Subchapter 4. Petitions Under Teachers' Minimum Salary Act**

#### **N.J.A.C. 6A:3-4.1 Withholding salary increment**

This section provides for filing a petition of appeal when an increment is withheld from a teaching staff member based on educational performance.

## **Subchapter 5. Charges Under Tenure Employees' Hearing Act**

### **N.J.A.C. 6A:3-5.1 Filing of written charges and certificate of determination**

This section prescribes the requirements for the filing and certification of charges against tenured school employees.

The Department proposes amendments at N.J.A.C. 6A:3-5.1(a), which provides for the filing of written charges and a certificate of determination related to charges under the Tenure Employees' Hearing Act, to add "except that the required notice of other pending matters pursuant to N.J.A.C. 6A:3-1.4(c) shall apply" at the end of the first sentence. The Department also proposes to add "the statement of evidence" after "shall file written charges." The proposed amendments are necessary to clarify the requirements and to reflect current practice.

The Department proposes an amendment at N.J.A.C. 6A:3-5.1(b)1, which sets forth procedures and timelines in all instances of the filing and certification of tenure charges, except charges filed against a teacher, principal, assistant principal, or vice principal for reasons of efficiency pursuant to N.J.S.A. 18A:6-17.3, to add "[c]omplete copies of all documents referenced in the statement of evidence shall be attached as part of the statement." The amendment is necessary to reflect current practice and to ensure fairness and efficiency in the process.

The Department proposes an amendment at N.J.A.C. 6A:3-5.1(b)6, which provides the procedure and deadline for the filing of tenure charges with the Commissioner upon the finding of probable cause, to add "the statement of evidence and" after "shall be accompanied by" in the second sentence. The proposed amendment is necessary to clarify the requirements and to reflect

current practice.

The Department proposes amendments at N.J.A.C. 6A:3-5.1(c)2 and 4, which describe the process for filing inefficiency charges, to add “and the statement of evidence” after references to the charges. The proposed amendments are necessary to clarify the requirements and to reflect current practice. The same amendment is proposed at N.J.A.C. 6A:3-5.4(c).

#### **N.J.A.C. 6A:3-5.2 Format of certificate of determination**

This section prescribes the requirements for the certificate of determination.

#### **N.J.A.C. 6A:3-5.3 Filing and service of answer to written charges**

This section prescribes the requirements for the filing of an answer to tenure charges, including the circumstances under which a request for extension may be made.

#### **N.J.A.C. 6A:3-5.4 Filing and certification of charges against tenured employees in the Departments of Children and Families, Corrections, and Education, and in the Juvenile Justice Commission**

This section prescribes the requirements for filing, certification, and answer of tenure charges against employees of State agencies accorded tenure under the school laws.

#### **N.J.A.C. 6A:3-5.5 Determination of sufficiency and transmittal for hearing**

The Department proposes an amendment at N.J.A.C. 6A:3-5.5(b), which provides for placing tenure charges in abeyance to add a reference to P.L. 2012, c. 26. The amendment is necessary as it provides authority to an arbitrator.

#### **N.J.A.C. 6A:3-5.6 Withdrawal, settlement or mooted of tenure charges**

This section sets forth the procedures and standards for withdrawal and settlement of tenure charges. The section also references a rule providing that where charges of crime, misdemeanor, or unbecoming conduct against a teaching staff member cannot be pursued because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for possible suspension or revocation of certificate.

#### **N.J.A.C. 6A:3-5.7 Arbitrators' Expenses**

The Department proposes new N.J.A.C. 6A:3-5.7 to set forth the rules for allowance of arbitrator expenses. Proposed new N.J.A.C. 6A:3-5.7 states that arbitrators' expenses shall be submitted, invoiced, and paid in accordance with the current New Jersey Department of the Treasury, Office of Management and Budget Circular setting forth the State's regulations regarding travel. The proposed rule is necessary to establish clear guidelines for the allowance and payment of arbitrators' expenses.

### **Subchapter 6. Termination of Sending-Receiving Relationship**

### **N.J.A.C. 6A:3-6.1 Application for termination or change in allocation**

This section prescribes a mechanism by which a fuller record can be developed for review by the Commissioner upon a district board of education's uncontested application to terminate or change the allocation of students in a sending-receiving relationship pursuant to N.J.S.A. 18A:38-13.

## **Subchapter 7. Appeals from Decisions of the New Jersey State Interscholastic Athletic Association (NJSIAA)**

### **N.J.A.C. 6A:3-7.1 Filing and service of petition**

This section prescribes the requirements for filing, service, and initial disposition of petitions appealing final decisions of the NJSIAA.

### **N.J.A.C. 6A:3-7.2 Answer; record on appeal**

This section prescribes the requirements for filing answers to petitions appealing NJSIAA decisions, and defines the limits of the record on which the Commissioner will decide an NJSIAA matter.

### **N.J.A.C. 6A:3-7.3 Schedule of briefing**

This section establishes the briefing schedule for appeals from final decisions of the NJSIAA.

#### **N.J.A.C. 6A:3-7.4 Applications for emergent relief**

This section sets forth the procedure for filing, briefing, and disposition of NJSIAA matters in which emergent relief is requested.

#### **N.J.A.C. 6A:3-7.5 Standard of review**

This section sets forth the standard of review for Commissioner determination on appeals from final decisions of the NJSIAA.

#### **N.J.A.C. 6A:3-7.6 Commissioner's decision**

This section incorporates the statutory provision for appeal of Commissioner decisions in NJSIAA matters to the Appellate Division of the Superior Court.

### **Subchapter 8. Appeals from Local District Determinations of Entitlement to Attend School Based Upon Domicile or Residency in District**

#### **N.J.A.C. 6A:3-8.1 Exceptions to general appeal requirements**

This section addresses special procedural issues associated with the appeal of district board of education determinations of ineligibility to attend school based on domicile or residency pursuant to N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22.

The Department proposes new N.J.A.C. 6A:3-8.1(a)4 to require petitions to be filed by the parent or guardian with whom the child lives in the school district. The proposed regulation is necessary to clarify requirements and to reflect current practice.

The Department proposes new N.J.A.C. 6A:3-8.1(f) to allow a student to continue to attend school while an appeal is pending, if the petition of appeal is filed within 21 days following a notice of ineligibility. The proposed regulation also requires the petitioner, after the 21-day period, to file a petition in accordance with N.J.A.C. 6A:3-1.3 and a motion for emergent relief pursuant to N.J.A.C. 6A:3-1.6. The proposed regulation further requires the petitioner to prevail on the motion for emergent relief in order for the student to continue to attend school while the appeal is pending.

## **Subchapter 9. Review of Penalty Recommendations of the School Ethics Commission**

### **N.J.A.C. 6A:3-9.1 Commissioner review of penalty recommendations**

This section references the procedure by which the Commissioner, pursuant to N.J.S.A. 18A:12-29.c, reviews penalty recommendations made by the School Ethics Commission (Commission) when it determines a violation of the School Ethics Act.

The Department proposes an amendment at N.J.A.C. 6A:3-9.1(a), which, in part, limits the

Commissioner's review to the appropriateness of the Commission's recommended penalty in light of the Commission's findings of fact and determinations of violation and requires the Commission to proceed in accordance with the OAL's requirements, to delete “, and shall proceed in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:6C.” The proposed amendment is necessary since N.J.A.C. 1:6C expired on June 6, 2010, and was not readopted.

### **Subchapter 10. Applications for Issuance of Facilities Bonds**

#### **N.J.A.C. 6A:3-10.1 Application to issue bonds following defeated referenda**

This section provides notice that applications for an order of the Commissioner authorizing the issuance of bonds without voter approval pursuant to the Educational Facilities Construction and Financing Act are to be filed, and shall proceed in accordance with the provisions of N.J.A.C. 6A:26, Educational Facilities.

### **Subchapter 11. Requests for Recording of Judgment**

#### **N.J.A.C. 6A:3-11.1 Recording of assessments on judgment docket of Superior Court**

This section sets forth the process for recording of assessments on judgment docket of Superior Court.

### **Subchapter 12. Hearings prior to Suspension or Revocation of School Bus Driver**

## **Endorsement Pursuant to N.J.S.A. 18A:39-28 et seq.**

### **N.J.A.C. 6A:3-12.1 Request for hearing upon notice of impending suspension or revocation**

This section sets forth the process for requesting a hearing prior to suspension or revocation of a school bus driver endorsement pursuant to N.J.S.A. 18A:39-28 et seq.

As the Department has provided a 60-day comment period on this notice of proposal, the notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The social impact of the rules proposed for readoption with amendments and a new rule will be positive because they will continue to ensure consistency, fairness, and due process to all members of the education community and the general public in connection with the adjudication of all controversies and disputes arising under applicable school laws. The rules proposed for readoption with amendments and a new rule are intended to make the process well-defined, accessible, and consistent with applicable law.

### **Economic Impact**

The rules proposed for readoption with amendments and a new rule will not impose an economic burden on parties initiating proceedings before the Commissioner to hear and decide controversies and disputes arising under applicable school laws. The only costs associated with

this chapter are those related to the preparation of required papers and representation by legal counsel if a party elects, or is required to be represented by law. There are no filing fees, nor is the Commissioner authorized to award attorney fees or damages.

### **Federal Standards Statement**

The rules proposed for re adoption with amendments and a new rule will not be inconsistent with nor exceed any Federal standards or requirements, since no such standards or requirements address the mechanism prescribed by this chapter.

### **Jobs Impact**

The Department anticipates no job generation or loss in other sectors of the economy as a result of the rules proposed for re adoption with amendments and a new rule.

### **Agriculture Industry Impact**

The rules proposed for re adoption with amendments and a new rule will have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

Certain entities that qualify as small businesses under the Regulatory Flexibility Act,

N.J.S.A. 52:14B-16 et seq., such as approved private schools for the disabled and small companies providing services or materials to district boards of education, are expected to comply with the chapter's procedures if they choose to initiate, or are named as a party. It is unlikely that a small business would initiate or be party to the type of proceeding governed by the chapter. However, the burden of compliance with the chapter's rules is minimal and is offset by the benefit of having a clearly defined mechanism for adjudication of controversies and disputes. Additionally, a party to an appeal can employ an attorney or other permitted person for purposes of representation, although professional services are not required under the chapter's rules. In all other respects, the rules proposed for readoption with amendments and a new rule impose no reporting, recordkeeping, or further compliance requirements on small businesses.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments and a new rule will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood the rules proposed for readoption with amendments and a new rule would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments and a new rule set forth the rules of procedure for filing petitions with the Commissioner to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9 et seq.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments and a new rule will have an insignificant impact on smart growth and there is an extreme unlikelihood the rules proposed for readoption with amendments and a new rule would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments and a new rule set forth the rules of procedure for filing petitions with the Commissioner to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9 et seq.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6A:3.

**Full text** of the proposed amendments and new rule follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 6A:3-1.1 Purpose and scope

- (a) This chapter sets forth the rules of procedure [established by the Department of Education] for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

- (b) This chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes:
1. The filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through [18A:6-]17.5;
  2. - 6. (No change.)
- (c) This chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. In accordance with N.J.S.A. 18A:7F-[5e(3)]**5.e(3)**, such restorations shall be sought pursuant to the provisions of N.J.A.C. [6A:23-8.10] **6A:23A-9.7**.
- (d) This chapter shall not apply to appeals of decisions of the State Board of Examiners suspending or revoking teaching certificates, decisions of the School Ethics Commission finding violation of the School Ethics Act, interlocutory decisions of the **State** Board of Examiners or the School Ethics Commission, or requests for relief arising out of legal decisions of the State Board of Education. In accordance with P.L. 2008, c. 36, such appeals and requests shall be made pursuant to the provisions of N.J.A.C. 6A:4.

#### 6A:3-1.2 Definitions

The words and terms used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

...

“Commissioner” means the Commissioner of Education or a designated [Assistant

Commissioner] **assistant commissioner** to whom the Commissioner has delegated the authority to hear and decide a controversy or dispute pursuant to N.J.S.A. 18A:4-33 and [18A:4-]34.

...

“Department” means the New Jersey [State] Department of Education.

...

“Filing” means receipt of an original paper by an appropriate officer of the Department. With the prior approval of the Director of the [Bureau] **Office** of Controversies and Disputes, and generally up to a maximum of 10 pages, filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document will follow by mail or hand delivery. Parties requesting return of a stamped copy of any filing must include an extra copy of the document, together with a self-addressed envelope stamped with sufficient postage for this purpose. Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.

...

“Interested person(s)” means a person(s) who will be substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner.

...

“State district superintendent” means the superintendent of a school district under [full] State intervention, as appointed or retained pursuant to N.J.S.A. 18A:7A-[35]**3 et seq.**

### 6A:3-1.3 Filing and service of petition of appeal

(a) To initiate a contested case for the Commissioner’s determination of a controversy or dispute arising under the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements of N.J.A.C. 6A:3-1.4 and serve such petition upon each respondent, together with any supporting papers the petitioner may include with the petition. The petitioner then shall file proof of service on each respondent, the telephone numbers (and fax numbers and e-mail addresses where available) of the petitioner and each respondent, and the original petition and supporting materials, if any, with the Commissioner c/o the Director, [Bureau] **Office** of Controversies and Disputes, New Jersey [State] Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. In no case shall a petitioner submit materials to the Commissioner [which] **that** have not been served upon each respondent.

1. – 2. (No change.)

3. A petitioner shall notify the [Bureau] **Office** of Controversies and Disputes of any change in address, telephone number, fax number, or e-mail address prior to transmittal of a matter to the OAL.

- (b) A petitioner shall name as a party any person or entity indispensable to the hearing of a contested case. Failure to name an indispensable party may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10.
1. In the case of petitions by unsuccessful bidders challenging an award of bid by a **district** board of education under the Public School Contracts Law (N.J.S.A. 18A:18A-1 et seq.), the successful bidder shall be named as a respondent.
- (c) – (d) (No change.)
- (e) Where a petition is filed by or on behalf of a student who is, or who may be as a result of a pending evaluation, subject to the provisions of an individualized education program (IEP) or an accommodation plan pursuant to Section 504 of the Rehabilitation Act, the petition shall so indicate. The petition shall further indicate whether the matter has been concurrently filed with the Department’s Office of Special Education Programs (OSEP).
1. If a petition appears to raise, in addition to issues within scope of the Commissioner’s authority, issues requiring a determination under State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, and the petition has not been concurrently filed with the OSEP, it will be docketed by the [Bureau] **Office** of Controversies and Disputes in accordance with this chapter and also forwarded to OSEP for docketing as a special education matter pursuant to N.J.A.C. 6A:14-2.7. The two offices shall concurrently transmit the matter to the OAL with a request that the OAL initially docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7, except that if the ALJ finds that some or all of the issues raised are within the authority of the Commissioner, the OAL shall additionally or instead, as the case may be, docket the

matter as an education (EDU) case and the ALJ shall render an initial decision on such issues as are within the authority of the Commissioner and forward it to the Commissioner for agency review pursuant to applicable rules of the OAL.

2. (No change.)

(f) Where a matter is transferred to the Commissioner by a court, it shall be the responsibility of the parties to ensure that the order of transfer, pleadings, and any other pertinent papers are forwarded to the Commissioner, c/o the Director, [Bureau] **Office** of Controversies and Disputes, New Jersey [State] Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500, either by the court or by the parties themselves. Where the documents filed do not sufficiently conform to the requirements of this section and N.J.A.C. 6A:3-1.4, the complainant(s) will be asked to re-submit the matter to the Commissioner in the form of a duly conformed petition of appeal, to which the respondent(s) will then be directed to file an answer in accordance with N.J.A.C. 6A:3-1.5.

(g) Consistent with the provisions of N.J.A.C. 1:10A-14, where a petition, or tenure charge pursuant to N.J.A.C. 6A:3-5, is filed in a matter involving allegations of child abuse and neglect reported to or investigated by the Department of Children and Families (DCF), the record of the matter shall be sealed to the extent necessary, pending further action by the ALJ **or arbitrator** to whom a matter is subsequently assigned [at the OAL], to protect all DCF records and reports regarding such abuse and neglect.

1. The final agency decision in any dispute as to the confidentiality of records or reports of child abuse or neglect shall be made by DCF in accordance with N.J.S.A. 9:6-8.10a and N.J.A.C. [10:133G] **3A:3**.

- (h) (No change.)
- (i) 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] **that** is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.
  - 1. (No change.)
  - 2. Pursuant to N.J.S.A. 18A:29-14 and 34:13A-[27(d)]**27.d**, where an increment withholding dispute has been submitted to the Public Employment Relations Commission for determination of whether the withholding was predominantly disciplinary and the Commission determines that the withholding was predominantly for reasons of teaching performance, the teaching staff member's petition shall be filed within 90 days of notice of the Commission's decision, or of the final judicial decision in any appeal from the decision of the Commission, whichever is later.
  - 3. A petitioner seeking to be heard as to why his or her endorsement to operate a school bus should not be suspended or revoked pursuant to N.J.S.A. 18A:39-28 et seq., because a child was found to have been left on the school bus to which he or she was assigned, shall file a petition within 10 business days of the date of the [Department of Education's] **Department's** written notice to petitioner of such finding.
- (j) When the [State of New Jersey] Department, [of Education] or one of its agents, [or] the

State Board of Examiners, or other entity located within the Department, is named as a party, proof of service on the Attorney General of the State of New Jersey is required. A petitioner shall direct such service to Department of Law and Public Safety, Division of Law, PO Box 112, Trenton, New Jersey 08625-0112, Attention: Education Section.

When another agency of the State of New Jersey is named as a party, service on the Attorney General is also required, and a petitioner shall effect service as set forth in this subsection, but to the attention of the appropriate section of the Division of Law.

6A:3-1.4 Format of petition of appeal

- (a) A petition shall include the name, address, telephone number, and, if available, fax number and e-mail address of each petitioner; the name, address, telephone number, and, if available, fax number and e-mail address of each party respondent; a statement of the specific allegation(s) and essential facts supporting them [which] **that** have given rise to a dispute under the school laws; the relief petitioner is seeking; and a notarized statement of verification or certification in lieu of affidavit for each petitioner. The petition should also cite, if known to petitioner, the section or sections of the school laws under which the controversy has arisen. A petition should be presented in substantially the following form:

(NAME OF PETITIONER(S)), : BEFORE THE COMMISSIONER  
PETITIONER(S), : OF EDUCATION OF NEW JERSEY  
V.  
(NAME OF RESPONDENT(S)), : PETITION

RESPONDENT(S). :

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, **whose telephone number is \_\_\_\_\_, fax number is \_\_\_\_\_ and email address is \_\_\_\_\_,** hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent whose address is \_\_\_\_\_, pursuant to the authority of the Commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

1. (Here set forth in as many itemized paragraphs as are necessary the specific allegation(s), and the facts supporting them, which constitute the basis of the controversy.)

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

\_\_\_\_\_  
Signature of petitioner or  
representative

Date \_\_\_\_\_

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

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

---

Signature of petitioner

Sworn and subscribed to before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(month) (year)

---

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

- (b) A petition submitted by a pro se petitioner that substantially includes the requisite information as set forth in (a) above shall be accepted for filing notwithstanding that the petition does not conform to the prescribed technical format[, and such petitioner shall be notified of any material deficiencies which shall be remedied before the matter can proceed]. However, where a petition does not meet minimal standards regarding parties, allegations, or relief sought, [it may be returned to] the petitioner [without being filed.]
- [1. Any submission returned to a petitioner pursuant to this subsection] shall be [accompanied by] **sent** a letter noting the date of the submission's receipt and identifying the deficiencies deemed to constitute substantial noncompliance. **The matter will not be filed until the noted deficiencies are corrected.**

(c) – (d) (No change.)

#### 6A:3-1.5 Filing and service of answer

- (a) The respondent(s) shall serve an answer upon the petitioner within 20 days after receipt of the petition, unless a shorter period is required by statute, regulation, or court order or directed by the Commissioner due to the emergent nature of a matter. The answer shall state in short and plain terms the defenses to each claim asserted and shall admit or deny the allegation(s) of the petition.
1. A respondent shall notify the [Bureau] **Office** of Controversies and Disputes of any change in address, telephone number, fax number, or e-mail address prior to transmittal of a matter to the OAL.
- (b) Respondent(s) may not generally deny all the allegations, but shall make specific denials [which] **that** meet the substance of designated allegations or paragraphs of the petition.
- (c) (No change.)
- (d) The answer, and any supporting papers the respondent includes, shall be filed with the Commissioner, together with proof of service of a copy thereof upon petitioner. In no case shall a respondent submit materials to the Commissioner [which] **that** have not been served upon the petitioner and other parties.
- (e) (No change.)
- (f) Upon written application by a party, the Commissioner may extend the time for answer, provided that the application was received by the Commissioner prior to the expiration of the initial 20-day period, and provided that a copy of the application was served upon

all parties to the contested case.

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

(g) – (h) (No change.)

#### 6A:3-1.11 Hearing

Upon the filing of the petition and answer(s) in a contested case, where the Commissioner does not determine to dismiss the matter pursuant to N.J.A.C. 6A:3-1.10, the Commissioner may either retain the matter for hearing directly and individually, designate an [Assistant Commissioner] **assistant commissioner** to hear and decide the matter pursuant to N.J.S.A. 18A:4-33 and [18A:4-]34, or transmit the matter for hearing before the OAL. All hearings, whether a matter is retained by the Commissioner, delegated to an [Assistant Commissioner] **assistant commissioner**, or transmitted to the OAL, shall be conducted in accordance with the rules of the OAL. If the Commissioner retains a matter for hearing directly or through a designee, the matter may, in the Commissioner or designee's discretion, be decided summarily where the record so permits. **This section does not apply to tenure matters governed by P.L. 2012, c. 26.**

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

(a) - (c) (No change.)

(d) Where a district board of education is a party to a contested matter, any proposed settlement, whether submitted to the Commissioner or to the OAL, shall indicate, by signature of the **district board of education** attorney or inclusion of the district board of education's resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.

(e) - (f) (No change.)

6A:3-1.14 Written decision

(a) Every determination of a controversy or dispute arising under the school law, [or of] **except** 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] **or** employees of charter schools **who are accorded tenure under the school law**, 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) - (c) (No change.)

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 rule 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 rules] **this chapter** 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] **that** are future, contingent, uncertain, or disputed.

(b) (No change.)

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\_\_\_\_, **whose telephone number is \_\_\_\_\_, fax number is \_\_\_\_\_ and email address is \_\_\_\_\_**, 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)

### 6A:3-2.3 Dissemination of declaratory ruling

The Commissioner shall ensure the dissemination to district boards of education of the result of any declaratory ruling through the executive county superintendents [of schools].

## SUBCHAPTER 3. ORDER TO SHOW CAUSE

### 6A:3-3.1 Commissioner's order to show cause

(a) If, in the course of supervising the schools, and following investigation, the Commissioner becomes aware of violation(s) of the school laws in school districts [which] **that**, if true, would entitle the Commissioner to impose a sanction on the Commissioner's own initiative, the Commissioner 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 **district board of education** 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 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. – 4. (No change.)

5. Withdrawing approval of a private vocational school, correspondence school, or online school, or the programs or staffing thereof (N.J.S.A. 34:15C-[10.2(b)]**10.2.b**);

6. Placing a **school** district under **partial or** full State intervention (N.J.S.A. 18A:7A-**14 or** 15); and

7. (No change.)

(b) (No change.)

#### SUBCHAPTER 4. PETITIONS UNDER TEACHERS' MINIMUM SALARY ACT

#### 6A:3-4.1 Withholding salary increment

- (a) Where a district board of education acts to withhold a teaching staff member's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the teaching staff member may file a petition of appeal according to the procedures set forth in this chapter.
1. Disputes involving the withholding of a teaching staff member's salary increment for predominately disciplinary reasons shall be subject to the grievance procedures established by law in accordance with N.J.S.A. 34:13A-26. Pursuant to N.J.S.A. 34:13A-27, if there is a dispute as to the nature of a withholding, the Public Employment Relations Commission shall determine whether the basis for the withholding is predominately disciplinary or predominantly for reasons of teaching performance; where the basis is found to be predominantly for reasons of teaching performance, a petition of appeal may thereafter be filed within the time frame set forth at N.J.S.A. 34:13A-[27(d)]**27.d** (see N.J.A.C. 6A:3-1.3(i)2).

### SUBCHAPTER 5. CHARGES UNDER TENURE EMPLOYEES' HEARING ACT

#### 6A:3-5.1 Filing of written charges and certificate of determination

- (a) N.J.A.C. 6A:3-1.3, Filing and service of petition of appeal, shall not apply in a case of tenure charges filed with the Commissioner against an employee of a district board of education or of a school district under full State intervention, **except that the required**

**notice of other pending matters pursuant to N.J.A.C. 6A:3-1.4(c) shall apply.** In place of the usual petition, the district board of education or the State district superintendent shall file written charges, **the statement of evidence**, and the required certificate of determination with the Commissioner, together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

1. (No change.)

(b) In all instances of the filing and certification of tenure charges, except charges filed against a teacher, principal, assistant principal, or vice principal for reasons of inefficiency pursuant to N.J.S.A. 18A:6-17.3, the following procedures and timelines shall be observed:

1. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the secretary of the district board of education or with the State district superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the person(s) instituting such charges. **Complete copies of all documents referenced in the statement of evidence shall be attached as part of the statement.**

2. – 5. (No change.)

6. If the district board of education or the State district superintendent finds probable cause exists and the charges, if credited, are sufficient to warrant a

dismissal or reduction of salary, then the district board of education or the State district superintendent shall file, within 15 days, written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by **the statement of evidence and** the required certificate of determination, together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

7. (No change.)

(c) If the tenure charges are charges of inefficiency pursuant to N.J.S.A. 18A:6-17.3, except in the case of building principals and vice principals in school districts under full State intervention, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following procedures and timelines shall be observed:

1. (No change.)

2. The charges of inefficiency **and the statement of evidence** shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date they were filed with the secretary of the district board of education or the State district superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.

3. (No change.)

4. Within 30 days of the filing, the district board of education or State district superintendent shall forward a written charge **and the statement of evidence** to the Commissioner, unless the district board of education or superintendent determines the evaluation process has not been followed. Such determination shall be made by a majority vote of the district board of education's full membership or by the State district superintendent.

5. – 7. (No change.)

(d) (No change.)

6A:3-5.4 Filing and certification of charges against tenured employees within the Departments of Human Services, Children and Families, Corrections, and Education, and within the Juvenile Justice Commission

(a) – (b) (No change.)

(c) If the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education finds probable cause exists and the charges, if credited, warrant dismissal or reduction in salary, then such person shall file the charges, **the statement of evidence**, and the required certification with the Commissioner of Education together with the name of the Deputy Attorney General who will be representing the agency and proof of service upon

the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.

(d) – (g) (No change.)

#### 6A:3-5.5 Determination of sufficiency and transmittal for hearing

(a) Except as specified in N.J.A.C. 6A:3-5.1(c), within 10 days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. If the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. If the charges are determined sufficient, the matter shall be transmitted immediately to an arbitrator for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3-1.12.

1. A notice of transmittal shall be issued to the parties by the Department [of Education] on the same date as the matter is transmitted to an arbitrator.

(b) Where a party to a tenure matter requests, the Commissioner may agree to hold the matter in abeyance at any time prior to transmittal to an arbitrator. Thereafter, requests to hold the matter in abeyance shall be directed to the arbitrator. Any request for abeyance, whether directed to the Commissioner or the arbitrator, shall be consistent with the intent of N.J.S.A. 18A:6-16, as amended by P.L. 1998, [c.42] **c. 42 and by P.L. 2012, c. 26.**

#### 6A:3-5.6 Withdrawal, settlement, or mooted of tenure charges

- (a) (No change.)
- (b) A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an employee's separation from service. If tenure charges have been certified to the Commissioner by a district board of education, any proposed settlement shall indicate, by signature of the **district board of education** attorney or inclusion of a district board of education resolution authorizing settlement, that the district board of education has consented to the terms of the settlement.
- (c) (No change.)
- (d) If tenure proceedings against a teaching staff member are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth in N.J.A.C. 6A:9B-[4.4]**4.3(a)**.
- (e) (No change.)

#### **6A:3-5.7 Arbitrators' expenses**

**Arbitrators' expenses shall be submitted, invoiced, and paid in accordance with the March 1, 2016, New Jersey Department of the Treasury, Office of Management and Budget Circular, incorporated herein by reference, as amended and supplemented, setting forth the State's rules regarding travel.**

SUBCHAPTER 6. TERMINATION OR ALTERATION OF SENDING-RECEIVING  
RELATIONSHIP

6A:3-6.1 Application for termination or change in allocation or apportionment

- (a) (No change.)
- (b) Where an application for change is unanswered within the requisite filing period, or is answered by a filing or filings indicating that each respondent does not oppose the application, the Commissioner shall so notify the petitioning district board of education and each respondent district board of education. At the next public meeting of each district board of education following notice from the Commissioner, each district board of education shall announce that the record before the Commissioner shall remain open for a period of 20 days from the date of the announcement in order that interested persons or entities may submit written comments to the Commissioner. Such announcement shall indicate the manner in which, and the address to which, comments may be submitted to the Commissioner as set forth in N.J.A.C. 6A:3-1.2 and [6A:3-]1.3, and shall further indicate the nature and purpose of such comments as set forth in (c) below.
  - 1. (No change.)
- (c) Comments submitted pursuant to (b) above shall not exceed 10 pages in length, shall be served on all parties to the case, shall include proof of such service when filed with the Commissioner, and shall specifically address the following statutory standard for the

Commissioner's review of applications for change in designation, allocation, or apportionment:

1. Comments shall address the question of whether the proposed change in designation, allocation, or apportionment will result in a substantial negative impact in any of the affected **school** districts in one or more of the following areas: educational and financial implications; quality of education received by students; and racial composition of the student populations.

(d) – (f) (No change.)

#### SUBCHAPTER 7. APPEALS FROM DECISIONS OF THE NEW JERSEY STATE INTERSCHOLASTIC ATHLETIC ASSOCIATION (NJSIAA)

##### 6A:3-7.6 Commissioner's decision

The Commissioner shall issue a written decision, which shall resolve **the** entire controversy before the Commissioner. The decision shall constitute, pursuant to N.J.S.A. 18A:11-3, the final decision of the State administrative agency for purposes of appeal to the Appellate Division of the Superior Court.

#### SUBCHAPTER 8. APPEALS FROM DISTRICT BOARD OF EDUCATION DETERMINATIONS OF ENTITLEMENT TO ATTEND SCHOOL BASED UPON DOMICILE OR RESIDENCY IN DISTRICT

## 6A:3-8.1 Exceptions to general appeal requirements

- (a) Appeals of district board of education determinations with respect to entitlement to attend school pursuant to N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22 shall generally proceed in accordance with the provisions of N.J.A.C. 6A:3-1, except as set forth below.
1. Petitions in letter form shall be accepted from pro se petitioners, provided that such petitioners use the form provided at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word) or prepare a letter wherein they:
    - i. – ii. (No changes.)
    - iii. Clearly indicate that they are appealing from a determination of ineligibility to attend school in the **school** district based upon residency or domicile and provide the date on which such determination was made; and
    - iv. Include a signed attestation, which need not be notarized, that:
      - (1) Their claim of entitlement is based upon facts [which] **that** are true to the best of their knowledge and belief; and
      - (2) (No change.)
  2. Petitions from pro se petitioners need not be served on the respondent district board of education, but may be filed solely with the [Bureau] **Office** of Controversies and Disputes (**Office**). Upon the receipt of any such petition, the Bureau will transmit, by facsimile, a copy of the petition and its appended supporting materials, if any, to the district board of education and the executive

county superintendent, together with notice of the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioners' child(ren) pending the outcome of the appeal.

- i. Nothing in (a)2 above shall preclude a pro se petitioner from serving a petition on a respondent district board of education in accordance with N.J.A.C. 6A:3-1.3. In such cases, the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioner's child(ren) pending the outcome of the appeal, shall commence on receipt of the petition, rather than on any subsequent notice from the [Bureau] **Office**.
- ii. Petitions filed by represented petitioners [must] **shall** conform to the requirements of N.J.A.C. 6A:3-1.3, including proof of service on the district board of education. Such petitions will not be transmitted to the district board or executive county superintendent by the [Bureau] **Office** of Controversies and Disputes as set forth in this section; however, upon receipt of any such petition, the [Bureau] **Office** will transmit by facsimile the notice of the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioners' child(ren) pending the outcome of the appeal.

3. (No change.)

**4. Petitions shall be filed by the parent or guardian with whom the child lives in the school district.**

- (b) Where appeal is taken from a determination of ineligibility under N.J.S.A. 18A:38-1(b) **1.b(1)** ("affidavit" students), such appeal shall be filed by the resident making the claim of entitlement and shall not be filed by the parent or legal guardian.
- (c) (No change.)
- (d) Where a petition is abandoned through withdrawal, failure to prosecute, or any means other than settlement agreeing to waive or reduce tuition and the Commissioner determines that the child(ren) are ineligible for a free education in the **school** district, and where the record includes a calculation reflecting the rate(s) of tuition for the year(s) at issue, the per diem rate of tuition for the current year, and the date on which the student's ineligible attendance began, payment of tuition, consistent with the provisions of N.J.A.C. 6A:22-6, may be ordered by the Commissioner in the decision finding abandonment of the appeal. Where the record does not include such a calculation, but the district board of education has filed a counterclaim for tuition along with its answer to the petition, the counterclaim shall proceed to hearing at the OAL notwithstanding that the petition has been withdrawn or abandoned.
- (e) Nothing in this subchapter shall preclude a district board of education from seeking payment of tuition, consistent with the provisions of N.J.A.C. 6A:22-6.1(a), for a student it determines to be ineligible to attend school in the **school** district.
- (f) **Where the petition of appeal is filed within 21 days following a notice of ineligibility, the student may continue to attend school while the appeal is pending. After the 21-day period, the petitioner shall file a petition in accordance with**

**N.J.A.C. 6A:3-1.3 and a motion for emergent relief pursuant to N.J.A.C. 6A:3-1.6.**

**The petitioner must prevail on the motion for emergent relief in order for the student to continue to attend school while the appeal is pending.**

[(f)] (g) The provisions of this subchapter shall not apply to disputes arising from a district board of education's assignment of a student to a particular school within the **school** district or to appeals of district board of education determinations not to permit continued attendance by a student who was, but no longer is, eligible to attend school in the district. Such disputes shall be filed, and proceed, in accordance with the general provisions of N.J.A.C. 6A:3-1.

## SUBCHAPTER 9. REVIEW OF PENALTY RECOMMENDATIONS OF THE SCHOOL ETHICS COMMISSION

### 6A:3-9.1 Commissioner review of penalty recommendations

- (a) By operation of N.J.S.A. 18A:12-[29(c)]**29.c**, the Commissioner shall review penalty recommendations of the School Ethics Commission. Such review shall be limited to the appropriateness of the penalty recommended by the Commission in light of its findings of fact and determinations of violation[, and shall proceed in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:6C].
- (b) Appeals of findings of violation by the School Ethics Commission, or of interlocutory decisions of the Commission, shall be made to the Commissioner pursuant to the provisions of N.J.A.C. 6A:4. Pursuant to N.J.S.A. 18A:12-[29(b)]**29.b** and N.J.A.C.

6A:28-11.1, appeals of findings that probable cause does not exist to credit the allegations in a complaint, or of dismissals of complaints, shall be made directly to the Appellate Division of Superior Court.

#### SUBCHAPTER 10. APPLICATIONS FOR ISSUANCE OF FACILITIES BONDS

##### 6A:3-10.1 Application to issue bonds following defeated referenda

Applications for an order of the Commissioner authorizing the issuance of bonds without voter approval pursuant to N.J.S.A. 18A:7G-12 may be made, and shall proceed, in accordance with the provisions of N.J.A.C. 6A:26-[3.7(i)]**3.7(h)**.

#### SUBCHAPTER 11. REQUESTS FOR RECORDING OF JUDGMENT

##### 6A:3-11.1 Recording of assessments on judgment docket of Superior Court

- (a) (No change.)
- (b) Requests to the Commissioner pursuant to (a) above shall be made by letter to the Commissioner c/o the Director, [Bureau] **Office** of Controversies and Disputes, New Jersey [State] Department of Education, 100 River View Plaza, PO Box 500, Trenton, New Jersey 08625-0500. Such letter shall indicate how much, if any, of the assessment has already been satisfied; and shall be accompanied by proof of service on each other party and a copy of the Commissioner's decision ordering the assessment.
  - 1. (No change.)

SUBCHAPTER 12. HEARINGS PRIOR TO SUSPENSION OR REVOCATION OF SCHOOL  
BUS DRIVER ENDORSEMENT PURSUANT TO N.J.S.A. 18A:39-28 ET SEQ.

6A:3-12.1 Request for hearing upon notice of impending suspension or revocation

- (a) Where a school bus driver has been notified by the Department's Criminal History Review Unit that a determination has been made that suspension or revocation, as the case may be, of the driver's school bus endorsement is warranted pursuant to N.J.S.A. 18A:39-28 et seq., because a child was left on the school bus to which the driver was assigned notwithstanding the driver's obligation to conduct a visual inspection at the end of the transportation route to assure that no pupil is left on the bus, the driver may contest such determination through the filing of a petition of appeal according to the procedures set forth in N.J.A.C. 6A:3-1.
1. (No change.)
  2. In addition to the service requirements of N.J.A.C. 6A:3-1.3(a) and (j), such petition shall additionally be served on the Department c/o Manager, Criminal History Review Unit, New Jersey [State] Department of Education, PO Box 500, Trenton, New Jersey 08625-0500.
- (b) – (c) (No change.)