

**EDUCATION**

**STATE BOARD OF EDUCATION**

**Controversies and Disputes**

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

Authorized By: State Board of Education, Lucille E. Davy, Commissioner, Department of  
Education and Secretary, State Board of Education

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

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

Proposal Number: PRN 2009-327

Submit written comments by January 1, 2010 to:

Ms. Kathleen Duncan, Director  
Office of Controversies and Disputes  
New Jersey Department of Education  
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The agency proposal follows:

### **Summary**

The Department of Education is proposing to readopt N.J.A.C. 6A:3, Controversies and Disputes, with amendments. The existing rules are due to expire September 6, 2010, pursuant to N.J.S.A. 52:14B-5.1c.

Since 1903, the Commissioner of Education has been designated by the Legislature to hear and decide controversies and disputes arising under the school laws and rules of the State Board of Education, generally through N.J.S.A. 18A:6-9 and specifically through enactments including: N.J.S.A. 18A:6-10 et seq. (hearing of tenure charges); N.J.S.A. 18A:7G-12 (bond issuance following defeated referenda); N.J.S.A. 18A:11-3 (appeals of New Jersey State Interscholastic Athletic Association (NJSIAA) decisions); N.J.S.A. 18A:12-29 (review of recommended School Ethics Commission penalties); N.J.S.A. 18A:38-1 (student domicile/residency disputes); N.J.S.A. 18A:38-13 (severance of sending-receiving relationships); N.J.S.A. 18A:29-14 (withholding of teaching staff member increments); N.J.S.A. 18A:39-28 et seq. (suspension or revocation of bus driver licenses where a student has been found left on the bus at the end of a route); N.J.S.A. 18A:60-1 et seq. (tenure charges against teaching staff in State institutions); and N.J.S.A. 18A:7A-15, 18A:7F-9, 18A:20-36, 18A:33-2, 18A:7-4, 18A:29-4, 18A:26-10, 18A:28-8 and 18A:54-4, and P.L. 2007, c. 260 as implemented through N.J.A.C. 6A:23-5.1 (show cause hearings for various actions). The Controversies and Disputes chapter establishes procedures pursuant to these statutes so as to provide, and ensure public

notice of, a uniform, orderly and fair process for adjudication of school law disputes. By so doing, the chapter contributes to the maintenance, in accordance with the Mission Statement and Strategic Plan of the State Board of Education, of a public school environment conducive to the exceptional learning opportunities that will allow students to obtain a superior education.

The overall framework and basic procedural requirements of the Controversies and Disputes chapter are controlled by the Administrative Procedure Act , N.J.S.A. 52:14B-1 et seq., and the rules for its implementation promulgated by the Office of Administrative Law (OAL), New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Basic contested case procedures as established by State administrative hearing laws have been in place for nearly three decades, and the rules promulgated by the Department to effectuate its role in that process have proven fundamentally sound over the years. However, in order to keep the process responsive to current circumstances and law, as well as clearly defined and accessible to users, in 1999-2000, the Department thoroughly examined the Controversies and Disputes chapter as part of its comprehensive review of Title 6 of the Administrative Code, and in March of 2000, the State Board of Education adopted the Department's proposed new chapter N.J.A.C. 6A:3, recodified from N.J.A.C. 6:24 and readopted with amendments so as to retain those aspects of the existing rules which remained valid and clarify or modify those areas where experience, new law or evolving circumstances dictated a need for change. N.J.A.C. 6A:3 was revisited in March of 2005, when it was readopted with amendments to incorporate recent laws and address certain areas where experience had demonstrated a need for additional rules, as well as provide for technical corrections and minor modifications in the interest of clarity, administrative efficiency, currency and conformity with prevailing stylistic norms for rule writing.

Since its March 2005 readoption with amendments, the chapter has continued to prove highly effective, and, once again, the intervening years have for the most part demonstrated a need for little more than refinement and updating. In the current rule proposal – as set forth more fully below – minor modifications have been made in the interest of style and clarity, and a number of adjustments have been made to reflect changes in the organization of State government, statutes enacted subsequent to March of 2005, or revisions in office operations by the Department or the OAL. Additionally, amendments are proposed in certain areas where experience has shown the need for clear regulatory notice of applicable statutory or decisional provisions, and new sections of rule are proposed to provide notice of the procedures developed for two types of specialized proceedings that have arisen in recent years.

Throughout the rules, amendments are proposed to reflect elimination of the Division of Youth and Family Services within the Department of Human Services and creation of the Department of Children and Families, and to make changes in terminology and procedural reference as necessitated by enactment of P.L. 2005, c. 235 (the New Jersey Quality Single Accountability Continuum (NJ QSAC)), and P.L. 2005, c. 354 (oversight of private training providers by the Department of Labor and Workforce Development), P.L. 2007, c. 63 (fiscal accountability and sharing/consolidation of services), and P.L. 2007, c. 260 (“School Funding Reform Act of 2008”), and their implementing rules. Also reflected in the proposed amendments is the July 7, 2008 enactment of P.L. 2008, c. 36, which eliminated the role of the State Board of Education in the hearing of administrative appeals, and provided instead that: 1) determinations of the Commissioner, including decisions in contested cases, were

final agency actions appealable to the Appellate Division of the Superior Court; 2) 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, and interlocutory decisions of the Board of Examiners or the School Ethics Commission were appealable to the Commissioner, whose decision on appeal constituted final agency action; and 3) requests for relief arising out of previously issued State Board of Education decisions were to be made to the Commissioner. As a result of this enactment, it became necessary to avoid confusion by distinguishing – generally and, in some cases, specifically – the procedures of this chapter from procedures on “appeal” within the meaning of P.L. 2008, c. 36 and its implementing rules at N.J.A.C. 6A:4. Additionally, current Department practices with respect to filings received after the close of business, limitations on faxed submissions, requests for return of a filed copy, and provision by parties of telephone and fax numbers are incorporated into the proposed rules to provide clear notice of such practices, which have arisen out of a need for increased efficiency and economy; concomitantly, prior requirements for submission by litigants of multiple copies have been eliminated, since the OAL no longer requires multiple copies from the agency. E-mail addresses are requested from parties at the directive of the OAL, for the purpose of enabling OAL to e-mail decisions of the Administrative Law Judge to parties.

In those areas where experience has shown the need for clear regulatory notice of applicable statutory or decisional provisions, amendments are also proposed to: 1) state the deadline for filing of increment withholding appeals following determination by the Public Employment Relations Commission that a matter should be heard by the Commissioner; 2) require letter petitions from *pro se* petitioners claiming entitlement to attend school on the

basis of residency to include a statement of understanding that they may be assessed tuition if they abandon or are unsuccessful in their appeal; 3) clarify that represented petitioners in residency appeals must abide by the standard requirements for petitions of appeal, including service on the board of education; 4) specify the process that is followed when a petitioner abandons his or her claim of entitlement to attend school in a district, but the district board of education has an outstanding claim for tuition; and 5) clarify that “uncontested application” proceedings must be followed where initial opposition to an application for severance of a sending-receiving relationship is later withdrawn and the resulting record does not sufficiently reflect adversarial views to enable the Commissioner to assess the proposed severance in light of the requisite statutory standards. Experience has likewise been the catalyst for proposed elimination of the practice – first codified in 2000 but proven unworkable over time as a standard operating procedure – of transferring certain matters to other offices within the Department or to other State agencies, rather than simply dismissing them for lack of jurisdiction.

Finally, new sections are proposed to set forth clear procedures for: 1) requests by prevailing parties to record monetary assessments on the judgment docket of Superior Court, a type of proceeding which has become fairly common in recent years in cases where the Commissioner has ordered payment of tuition following determination of a student’s ineligibility to attend school in a district; and 2) requests for hearing by school bus drivers seeking to contest the Department’s determination that a child has been left on the bus at the end of the driver’s assigned route, a type of proceeding which has arisen as a result of recent legislation (P.L. 2007, c. 77) providing for suspension or revocation of a driver’s school bus endorsement when this occurs.

The following summarizes the content of each subchapter, noting proposed amendments to existing rules:

## **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. A proposed new subsection (d) is added to clarify that the provisions of this chapter do not apply to certain types of appeals, which are governed instead by the provisions of N.J.A.C. 6A:4, and a corollary amendment is proposed to subsection (c) for structural consistency with the proposed new subsection.

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

This section defines terms used throughout the chapter. Amendments are proposed to: 1) expand the definition of “day” to provide notice that filings received after the close of business at 4:15 P.M. are deemed filed the next business day; 2) update the definition of “district board of education” to reflect current statutory terminology with respect to districts subject to State intervention; and 3) add a definition of “State district superintendent” to clarify, by reference to the applicable statute, that the term applies to any superintendent in a district under full State intervention, regardless of whether he or she is newly appointed or retained from

the district's prior administration. Additionally, the definition of "filing" is revised and expanded to reflect current Department practices: 1) requiring permission from the director of the Bureau of Controversies and Disputes before papers may be faxed and establishing a general limit of 10 faxed pages; 2) requiring provision an extra copy of, and self-addressed stamped envelope for, any submission for which a litigant wishes return of a filed copy; and 3) deeming submissions received after the close of business at 4:15 P.M. to be filed on the next business day.

### **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. Amendments are proposed to N.J.A.C. 6A:3-1.3(a) to delete prior requirements for two extra copies of all submissions and require submission of party e-mail addresses, where available, and to N.J.A.C. 6A:3-1.3(a)3 to incorporate references to fax and e-mail address. An amendment is proposed to N.J.A.C. 6A:3-1.3(e)2 providing for dismissal – rather than transfer to the Office of Special Education – of a matter determined, after notice to the parties and opportunity to be heard, to pertain solely to issues arising under special education law. Minor technical and stylistic adjustments are proposed to N.J.A.C. 6A:3-1.3(f) and (j), while amendment is proposed to N.J.A.C. 6A:3-1.3(g) to update references to the former Division of Youth and Family Services. Proposed new language is added at N.J.A.C. 6A:3-1.3(i)2 to clarify that the 90-day filing period for increment withholding matters submitted to the Public Employment Relations Commission for determination of proper forum begins to run upon notice of the Commission's decision or the final judicial decision in any appeal thereof, and at N.J.A.C. 6A:3-1.3(i)3 to provide notice that school bus drivers seeking a hearing prior to

suspension or revocation of the school bus driver endorsement for leaving a child on the bus at the end of the route must file their appeals within 10 business days of the date of the Department's written notice of the impending suspension or revocation.

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

This section prescribes the format for preparing a petition of appeal. Amendments are proposed at N.J.A.C. 6A:3-1.4(a), for consistency with N.J.A.C. 6A:3-1.3, to require that petitioners provide telephone and, if available, fax numbers and e-mail addresses for themselves and each respondent

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

This section prescribes the filing and content requirements for answers to petitions of appeal. Amendments are proposed to N.J.A.C. 6A:3-1.5(a)1 for consistency with the party information requirements of N.J.A.C. 6A:3-1.3; to N.J.A.C. 6A:3-1.5(d) and (g) to eliminate the current requirement for extra copies of submissions; to N.J.A.C. 6A:3-1.5(e) for clarity; and to N.J.A.C. 6A:3-1.5(g) to indicate that briefing on a motion to dismiss in lieu of answer, where such motion is to be decided following transmittal to the OAL, will be in accordance with the schedule set by the Administrative Law Judge.

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

This section prescribes the requirements for the filing and disposition of motions for emergent relief. An amendment is proposed to the section heading to indicate more clearly the section's content, and the current requirement at N.J.A.C. 6A:3-1.6(e) for extra copies of submissions is proposed for elimination.

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

This section prescribes the parties' right to file amendments to pleadings. An amendment is proposed to N.J.A.C. 6A:3-1.7(a) to eliminate the current requirement for extra copies of submissions.

**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. An amendment is proposed to N.J.A.C. 6A:3-1.8(b) to eliminate the current requirement for extra copies of submissions.

**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. No amendments are proposed to this section.

**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. An amendment is proposed to delete the current subsection (b), which authorizes the Bureau of Controversies and Disputes to transfer certain matters to another office within the Department or to the Division on Civil Rights, and to eliminate the codification of the preceding subsection to reflect such deletion.

**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. No amendments are proposed to this section.

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

This section prescribes the procedure for submission and hearing of motions for summary decision. Amendments are proposed to N.J.A.C. 6A:3-1.12(a) to eliminate the current requirement for extra copies of submissions and clarify that applications for summary decision are made by motion duly served on each other party.

**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. Minor stylistic amendments are proposed to subsection (d).

**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. An amendment is proposed to N.J.A.C. 6A:3-1.14(b) to reflect the recent statutory provision that Commissioner decisions are final agency decisions appealable to the Appellate Division of the Superior Court.

**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. Amendments are proposed to subsection (a) to – consistent with the dictate of P.L. 2008, c. 36 that Commissioner decisions are appealable to the Appellate Division of the Superior Court – that a motion for stay pending appeal must be filed concurrent with or subsequent to the filing of a notice of appeal with the Appellate Division, but not later than the 45-day deadline established by court rule for

the filing of such notices. Additionally, the current requirement for extra copies of submissions at subsection (e) is proposed for elimination.

#### **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. No amendments are proposed to this section.

#### **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. No amendments are proposed to this section.

### **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. No amendments are proposed to this section.

### **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.

No amendments are proposed to this section.

### **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 of schools. An amendment is proposed to reflect current statutory terminology.

## **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. In subsection (a), amendments are proposed for clarity and to add or update pertinent statutory citations, adjust terminology based on current usage and statutory language, and add a provision based on recent statutory and regulatory enactments authorizing withholding or recovery of State aid due to unreasonable, ineffective or inefficient expenditures. In subsection (b), amendments are proposed to accommodate a new provision clarifying, by directing the reader to a proposed new subchapter, that orders to show cause may not be sought

for purposes of enforcing monetary awards through recording of the Commissioner's final order of assessment on the judgment docket of the Superior Court.

#### **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. Amendments are proposed for precision in language and to provide clear notice of the statutory time frame for filing of an appeal to the Commissioner where a dispute has first been submitted to the Public Employment Relations Commission for determination of proper forum.

#### **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. Amendments are proposed to subsection (a) to eliminate the current requirement for extra copies of submissions, conform terminology to current statutory usage, and to make minor structural adjustments in the interest of clarity. An amendment is also proposed to subsection (c) to provide clear notice that its provisions apply, by statute, to vice principals as well as principals.

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

This section prescribes the requirements for the certificate of determination. No amendments are proposed to this section.

### **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. Amendments are proposed to N.J.A.C. 6A:3-5.3(a)1 to: 1) indicate that briefing on a motion to dismiss in lieu of answer, where such motion is to be decided following transmittal to the OAL, will be in accordance with the schedule set by the Administrative Law Judge; and 2) eliminate the current requirement for extra copies of submissions.

### **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. Amendments are proposed to subsections (a) through (e) to conform agency names and titles to current usage.

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

This section sets forth the duties of the Commissioner upon the filing of tenure charges. No amendments are proposed to this section.

#### **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, and 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. An amendment is proposed to subsection (d) to clarify that it pertains solely to teaching staff members.

### **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'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. Amendments are proposed to subsection (c) to eliminate the current requirement for extra copies of submissions, and a new subsection (f) is proposed to clarify that, where an application is initially contested but subsequently proposed – either prior to transmittal to the OAL or during OAL proceedings – to be granted as a result of settlement or withdrawal of all opposition, the subchapter will apply if the record as it then stands is insufficient, due to the absence of adversarial perspective, for assessment consistent with the standard of statute.

## **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. No amendments are proposed to this section.

### **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. No amendments are proposed to this section.

**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. No amendments are proposed to this section.

**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. No amendments are proposed to this section.

**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. No amendments are proposed to this section.

**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. No amendments are proposed to this section.

## **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 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. Amendments are proposed: 1) at N.J.A.C. 6A:3-8.1(a)1, to require letter petitions from *pro se* petitioners to include telephone and, where available, fax numbers and e-mail addresses, as well as a statement of understanding that they may be assessed tuition if they abandon or are unsuccessful in their appeal; 2) at N.J.A.C. 6A:3-8.1(a)2, to clarify that represented petitioners must conform to the customary requirements for petitions of appeal, including service on the board of education; and 3) at a newly proposed subsection (d), to recast the current provisions of N.J.A.C. 6A:3-8.1(d)1 to specify more clearly the process that will transpire where an appeal is abandoned by the petitioner and the Board seeks an order assessing tuition. Amendments are also proposed in subsection (a) to reference applicable regulations, provide notice of Department practice with respect to acknowledging receipt of petitions, eliminate requirements for multiple copies, and conform terminology to current statutory usage; the current subsections (d) and (e) are recodified as subsections (e) and (f) to accommodate the proposed rewriting and recodification of N.J.A.C. 6A:3-8.1(d)1.

## **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, as set forth in OAL rules at N.J.A.C. 1:6C, by which the Commissioner – pursuant to N.J.S.A. 18A:12-29(c) – reviews penalty recommendations made by the School Ethics Commission when that body finds that a violation of the School Ethics Act has occurred. Amendments to subsection (a) and a new subsection (b) are proposed to clearly distinguish this procedure from appeal of the Commission’s actual findings of violation or interlocutory decisions – which are now heard by the Commissioner in accordance with N.J.A.C. 6A:4 – and from appeals of its dismissal of a complaint or finding of no probable cause to credit the allegations in a complaint, which are heard by the Appellate Division of the Superior Court.

## **Subchapter 10. “Abbott” Appeals**

### **N.J.A.C. 6A:3-10.1 Appeal of Department determinations**

This section clarifies that appeals of Department determinations in “Abbott” matters shall proceed in accordance with the provisions of this chapter pertaining to petitions of appeal, except as otherwise required by applicable rules or directives of the Court. No amendments are proposed to this section.

## **Subchapter 11. Applications for Issuance of Facilities Bonds**

### **N.J.A.C. 6A:3-11.1 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. No amendments are proposed to this section.

## **Subchapter 12. Requests for Recording of Judgment**

A new subchapter is proposed to address special provisions for requests for recording of judgments.

### **6A:3-12.1 Recording of assessments on judgment docket of Superior Court**

This proposed new section provides clear public notice of the process by which a prevailing party may, pursuant to N.J.S.A. 2A:58-10, request the Commissioner to issue an order notifying the Clerk of the Superior Court that the Commissioner's final order in a contested case, assessing a fixed amount of money against a non-prevailing party, is subject to recording on the

judgment docket of the court. It further provides for a non-prevailing party to be heard, prior to such recording, as to any claim of error in the amount of judgment sought.

### **Subchapter 13. Hearings prior to Suspension or Revocation of School Bus Driver**

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

A new subchapter is proposed to address special provisions for hearings following a finding that a child has been left on a school bus driver's bus.

#### **6A:3-13.1 Request for hearing upon notice of impending suspension or revocation**

This proposed new section provides clear public notice of the process by which a school bus driver, who has been advised of the Department's determination that suspension or revocation of his or her school bus endorsement is required pursuant to N.J.S.A.18A:39-28 et seq. because a child was left on the school bus to which he or she was assigned, may contest such determination prior to the Department's notifying the Motor Vehicle Commission of its obligation to suspend or permanently revoke the driver's school bus endorsement and the driver's employer of the driver's ineligibility, for the period of suspension or permanently, as the case may be, for employment as a school bus driver.

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

## **Social Impact**

The primary impact of the rules proposed for re adoption with amendments is to provide a uniform mechanism by which district boards of education, school employees, students, parents and the general public may obtain due process and seek relief for alleged violations of school law by having disputes decided by the Commissioner of Education. The rules as proposed are intended to make this mechanism as well-defined, accessible and easy to use as possible, consistent with the requirements of the Administrative Procedure Act.

## **Economic Impact**

The rules proposed for re adoption with amendments will impose no economic burden on parties in contested cases other than those associated with preparation of required papers, appearance at hearing when necessary, and representation by legal counsel where a party elects, or is required, to be so represented; in this regard, the elimination of requirements for submission of extra copies will result in savings to parties, while requiring parties to bear the burden of copying and postage for return of filed copies and limiting the number of pages that may be faxed will result in economies for the Department. There are no filing fees, nor is the Commissioner authorized to award attorney fees or damages.

### **Federal Standards Statement**

The rules proposed for readoption with amendments will not be inconsistent with or exceed any Federal standards or requirements, since no such standards or requirements address the mechanisms prescribed in this chapter.

### **Jobs Impact**

The rules proposed for readoption with amendments will result in neither the generation nor the loss of jobs in public school districts or the State.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

Certain entities qualifying as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., such as approved private schools for the handicapped and small companies providing services or materials to public school districts, must comply with the procedures of this chapter in the event they choose to initiate, or are named as a party to, a contested case before the Commissioner; however, the burden of such compliance is minimal,

and is offset by the benefit of having a clearly defined mechanism for resolution of disputes. Additionally, a party to a contested case may wish to employ an attorney or other permitted person for purposes of representation, although such professional services are not required under the rules. In all other respects, the rules proposed for readoption with amendments impose no recording, recordkeeping or further compliance requirements on small businesses.

### **Smart Growth Impact**

The rules proposed for readoption with amendments will have no impact on the achievement of smart growth or implementation of the State Development/Redevelopment Plan.

### **Housing Affordability Impact**

The rules proposed for readoption with amendments will have no impact on the average cost of housing in the State. The rules establish procedures for the hearing and adjudication of school law disputes by the Commissioner of Education.

### **Smart Growth Development Impact**

The rules proposed for readoption with amendments will not evoke a change in housing production in Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules establish procedures for the hearing and adjudication of school law disputes by the Commissioner of Education.

**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 follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 1. GENERAL PROVISIONS

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

(a) – (b) (No change.)

(c) [In accordance with N.J.S.A. 18A:7F-5e(3), this] **This** chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. [Such] **In accordance with N.J.S.A. 18A:7F-5e(3), such** restorations shall be sought pursuant to the provisions of N.J.A.C. 6A:23-8.10.

**(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 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:

...

“Day” means business day when the period specified is less than seven days, and calendar day when the period specified is seven days or more; provided, however, that calculations do not include the day of the action from which they are computed but do include the last day of the period being computed unless such day falls on a Saturday, Sunday or holiday, in which case the

last day shall be deemed the next business day immediately following. **Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.**

...

“District board of education” means the board of education of a local or regional school district, a county special services school district or a county vocational school district, or the State district superintendent of a [State-operated] school district **under full State intervention**, the board of directors of an educational services commission or jointure commission, or the board of trustees of a charter school.

“Filing” means receipt of an original paper by an appropriate officer of the Department. [Filings] **With the prior approval of the Director of the Bureau 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 [and requisite copies] 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.**

...

“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.**

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 [and two copies of the] petition and supporting materials, if any, with the Commissioner c/o the Director, Bureau 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 have not been served upon each respondent.

1. – 2. (No change.)

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

(b) – (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. (No change.)

2. If a petition appears solely to raise 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, it may, after notice to the parties and

opportunity to be heard, be [transferred to the OSEP] **dismissed** in accordance with the provisions of N.J.A.C. 6A:3-1.10[(b)].

(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 of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P[.]O[.] 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] **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 [Division of Youth and Family Services (DYFS)] **Department of Children and Families (DCF)**, the record of the matter shall be sealed to the extent necessary, pending further action by the ALJ to whom a matter is subsequently assigned at the OAL, to protect all [DYFS] **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 [DYFS] **DCF** in accordance with N.J.S.A. 9:6-8.10a and N.J.A.C. 10:133G.

(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 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), 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 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 [to] **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 [section] **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, [and] **address, telephone number, and, if available, fax number and e-mail address** of each petitioner; the name, [and] 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 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 \_\_\_\_\_,

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).

Date\_\_\_\_\_

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

(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) – (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 of Controversies and Disputes of any change in address, [or] telephone number, **fax number or e-mail address** prior to transmittal of a matter to the OAL.

(b) – (c) (No change.)

(d) The [original and two copies of the] answer, and [of] 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 have not been served upon the petitioner and other parties.

(e) Failure to answer **a petition** within the 20-day period from receipt of service shall result in a notice to the respondent informing the respondent that unless an answer is filed within 10 days of the receipt of said notice, each count in the petition [of appeal] shall be deemed admitted and the Commissioner may decide the matter on a summary basis.

(f) (No change.)

(g) Nothing in this section precludes the filing of a motion to dismiss in lieu of an answer to a petition, provided that such motion is filed within the time allotted for the filing of an answer. Briefing on such motions shall be in the manner and within the time fixed by the Commissioner, **or by the ALJ if the motion is to be briefed following transmittal to the OAL.**

[1. Any papers filed in conjunction with such a motion shall be submitted in original form with two copies.]

(h) (No change.)

#### 6A:3-1.6 [Interim] **Emergent** relief or stay

(a) – (d) (No change.)

[(e) All papers submitted in conjunction with a motion for interim relief or stay shall be in original form with two copies.]

#### 6A:3-1.7 Amendment of petition and answer

(a) 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 the petition, and any respondent may amend the answer; provided, however, that once an answer or other responsive pleading is filed, an amendment to a petition may be made only with the consent of each adverse party or by leave of the Commissioner upon written application.

[1. Any amendment or application to amend shall be submitted in original form with two copies.]

(b) (No change.)

#### 6A:3-1.8 Permission to intervene or participate

(a) (No change.)

(b) Such requests, whether decided by the Commissioner or by the OAL, shall be reviewed in accordance with the standards set forth in applicable rules of the OAL.

[1. Any request for intervention or participation shall be submitted in original form with two copies.]

#### 6A:3-1.10 Dismissal or transfer of petition

[(a)] At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason.

[(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 and notice to the parties with opportunity to be heard, 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.]

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

(a) At any time concurrent with or subsequent to the filing of an answer, but prior to transmittal of a matter to the OAL, any party may [move before] **apply to** the Commissioner for summary decision **by way of a motion with proof of service on each other party**. The Commissioner may decide the motion directly 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 together with proof of service on each other party.]

(b) (No change.)

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

(a) – (c) (No change.)

(d) Where [the] 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 board attorney or inclusion of [a] **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) (No change.)

(b) Any determination or decision of the Commissioner is appealable to the [State Board of Education, except where otherwise] **Appellate Division of the Superior Court** as 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] **the** court.

(c) (No change.)

#### 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 or the court, as the case may be] **Appellate Division of the Superior Court**. Such motion shall be made subsequent to, or

concurrent with, the filing of a notice of appeal with the [State Board or the] court, but within [30] **45** days of the filing of the Commissioner's decision.

1. (No change.)

(b) – (d) (No change.)

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

## SUBCHAPTER 2. DECLARATORY RULINGS

### 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 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 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 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. (No change.)
2. Withholding State aid for unsuitable facilities (N.J.S.A. 18A:33-2 **and 18A:7F-9**);
3. Withholding salaries of:
  - i. [A] **An executive** county superintendent (N.J.S.A. 18A:7-4); [and] **or**
  - ii. (No change.)
4. (No change.)
5. Withdrawing approval of a **private** 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); and] **or online school, or the programs or staffing thereof (N.J.S.A. 34:15C-10.2(b))**;
6. [Establishing a State-operated school district] **Placing a district under full State intervention** (N.J.S.A. [18A:7A-14(e)].) **18A:7A-15**); **and**
7. **Withholding or recovery of State aid due to unreasonable, ineffective or inefficient expenditures (N.J.S.A. 18A:7F-9 and N.J.A.C. 6A:23A-5.1).**

(b) Parties to contested matters shall not submit or request the issuance of orders to show cause seeking enforcement of litigants' rights. Parties seeking enforcement of judgments of the Commissioner shall generally bring an action in the Superior Court as provided in New Jersey Court Rules at R.4:67-6.

1. Such actions as are appropriately brought before the Commissioner due to the need for a further determination on a school law issue in order to resolve the parties' adjudicated rights, are to be initiated by way of a petition conforming to the requirements of N.J.A.C. 6A:3-1.3,

accompanied, where appropriate, by a motion for emergent relief with a letter memorandum or brief addressing the standards to be met for granting such relief pursuant to [Crowe v. DeGioia] *Crowe v. DeGioia*, 90 [N.J.]*N.J.* 126 (1982) as set forth at N.J.A.C. 6A:3-1.6(b).

**2. Requests for enforcement of a monetary award through recording of the Commissioner's final order of assessment on the judgment docket of the Superior Court pursuant to N.J.S.A. 2A:58-10 shall be made in accordance with N.J.A.C. 6A:3-12.1.**

#### 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 [teacher's] **teaching staff member's** salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the [teacher] **teaching staff member** may file a petition of appeal according to the procedures [outlined] **set forth** in this chapter.

1. Disputes involving the withholding of a [teacher's] **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) (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) [In **N.J.A.C. 6A:3-1.3, Filing and service of petition of appeal, shall not apply** in a case of charges preferred before the Commissioner against an employee of a district board of education or of a [State-operated] school district **under full State intervention** pursuant to the Tenure Employees' Hearing Act[, N.J.A.C. 6A:3-1.3, Filing and service of petition, shall not apply]. In place of the usual petition, the district board of education or the State district superintendent shall file the [original and two copies of the] written charges 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) (No change.)

(c) In the event that the tenure charges are charges of inefficiency, except in the case of building principals **and vice principals** in [State-operated] 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. – 10. (No change.)

(d) (No change.)

6A:3-5.3 Filing and service of answer to written charges

(a) An individual against whom tenure charges are certified shall have 15 days from the date such charges are filed with the Commissioner to file a written response to the charges. Except as to time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).

1. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in this subsection precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided that such motion is filed within the time allotted for the filing of an answer. [Any papers filed in conjunction with a motion to dismiss shall be submitted in original form with two copies.] Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, **or by the ALJ if the motion is to be briefed following transmittal to the OAL.**

(b) – (d) (No changes.)

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

(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] **Children and Families**, Corrections and Education, or within the Juvenile Justice Commission pursuant to N.J.S.A. 52:17B-170, other than for reasons of inefficiency shall comport with the process as described in N.J.A.C. 6A:3-5.1(b) except as set forth in this section. 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, [the Director of the Office of Educational Services in] **the Department of Children and Families**, or the Juvenile Justice Commission, or with an individual within the Department of Education designated by the

Commissioner, as appropriate. 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. 6A:3-5.1(b).

1. (No change.)

(b) The [Director of Employee Relations in the Department of Human Services, the] Director of the Office of Educational Services in the Department of Corrections, [the Director of the Office of Educational Services in] **the Department of Children and Families, or** the Juvenile Justice Commission, **or the** individual designated by the Commissioner of Education, **as the case may be**, 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 the determination in writing in the manner prescribed by N.J.A.C. 6A:3-5.1(b).

(c) In the event that the [Director of Employee Relations in the Department of Human Services, the] Director of the Office of Educational Services in the Department of Corrections, [the Director of the Office of Educational Services in] **the Department of Children and Families or** the Juvenile Justice Commission, 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 such person shall file such charges 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) 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. 6A:3-5.1(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 out of the Department of Human Services, the] Director of the Office of Educational Services for charges arising out of the Department of Corrections, [the Director of the Office of Educational Services for charges arising out of] **the Department of Children and Families or the Juvenile Justice Commission;** 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 in the Department of Human Services, the] Director of the Office of Educational Services in the Department of Corrections, [the Director of the Office of Educational Services in] **the Department of Children and Families, or the Juvenile Justice Commission,** or the individual designated by the Commissioner of Education:

1. – 3. (No change.)

(f) – (h) (No change.)

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

(a) – (c) (No change.)

(d) Where 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:9-17.4.

(e) (No change.)

## SUBCHAPTER 6. TERMINATION OR ALTERATION OF SENDING-RECEIVING RELATIONSHIP

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

(a) – (b) (No change.)

(c) Comments submitted pursuant to (b) above shall not exceed 10 pages in length, [shall be submitted to the Commissioner in duplicate,] 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. (No change.)

(d) – (e) (No change.)

**(f) Where an application is initially contested but subsequently proposed, either prior to transmittal or at the OAL, to be granted as a result of settlement or withdrawal of each respondent’s opposition, the process set forth in this subchapter shall apply if the record does not reflect an adversarial perspective sufficient for the Commissioner to assess the application consistent with the standard of statute.**

## 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 [this chapter]**N.J.A.C. 6A:3-1**, except as set forth below.

1. Petitions in letter form shall be accepted from pro se [petitions] **petitioners**, provided that such petitioners:

i. Identify themselves by name, address, [and] telephone number, **and**, where available, **fax number and e-mail address**;

ii. – iii. (No change.)

iv. Include a signed attestation, which need not be notarized, that: [their]

**(1) Their** claim of entitlement is based upon facts which are true to the best of their knowledge and belief; **and**

**(2) They understand that they may be assessed tuition for the period of the child(ren)'s ineligible attendance if the Commissioner determines the child(ren) to be ineligible for a free education in the district, or finds that the appeal has been abandoned or withdrawn.**

2. [Appeals] **Petitions** from pro se petitioners need not be [submitted in triplicate or] served on the respondent district board of education, but may [instead] be filed [directly] **solely** with the Bureau of Controversies and Disputes. Upon the receipt of any such [appeal] **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. (No change.)

**ii. Petitions filed by represented petitioners must 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 of Controversies and Disputes as set forth in this section; however, upon receipt of any such petition, the Bureau 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.)

(b) – (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 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.**

[(d)] (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 district.

[1. Where a person claiming entitlement to attend school in the district has filed an appeal with the Commissioner but withdraws or otherwise abandons the appeal prior to its adjudication on the merits, upon the Commissioner's finding that the appeal has been so withdrawn or abandoned, the district board of education may remove the student from school and seek tuition for the period of ineligible attendance; provided, however, that where a counterclaim has been filed by the district board of education, and the record includes 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, the Commissioner may order payment of tuition, consistent with the provisions of N.J.A.C. 6A:22-6, in his or her decision on withdrawal or abandonment of the appeal.]

[(e)] (f) (No change in text.)

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

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

(a) [The] **By operation of N.J.S.A. 18A:12-29(c), the** Commissioner shall review penalty recommendations of the School Ethics Commission [pursuant to N.J.S.A. 18A:12-29(c)]. 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, [which are not reviewable by the

Commissioner,] 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) 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 12. REQUESTS FOR RECORDING OF JUDGMENT**

### **6A:3-12.1 Recording of assessments on judgment docket of Superior Court**

**(a) Where the Commissioner has, in a final decision in a contested case, assessed a fixed amount of money against a non-prevailing party, the party(ies) to whom relief was awarded may request the Commissioner to issue an order notifying the Clerk of the Superior Court that the final order of assessment is subject to recording on the judgment docket of the court pursuant to N.J.S.A. 2A:58-10.**

**(b) Requests to the Commissioner pursuant to (a) above shall be made by letter to the Commissioner c/o the Director, Bureau 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. Upon the Department's receipt of a conforming letter of request, the non-prevailing party shall be afforded an opportunity to provide reasons why the**

Commissioner should not seek recording of the judgment. Such reasons may not dispute the fact that monies are owed or the amount of such monies as reflected in the final order of assessment, but shall be limited to claims of error in the amount of judgment sought, for example, because payments have been made that the letter of request does not reflect.

**SUBCHAPTER 13. HEARINGS PRIOR TO SUSPENSION OR REVOCATION OF SCHOOL BUS DRIVER ENDORSEMENT PURSUANT TO N.J.S.A. 18A:39-28 ET SEQ.**

**6A:3-13.1 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. Such petition shall be filed within 10 business days of the date of the Department's written notice to petitioner of such determination.

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) The following aspects of the Department's determination may be contested:

1. That a pupil was left on the bus at the end of the driver's route;
2. That the incident in question was the driver's second offense;

- 3. That the pupil was harmed as a result of foreseeable danger; and**
- 4. That the driver acted with gross negligence.**

**(c) Where no petition is filed within the requisite time frame, or where a petitioner does not prevail before the Commissioner in demonstrating that the Department's determination was in error, the Department's Criminal History Review Unit will:**

- 1. Notify the Motor Vehicle Commission of its obligation pursuant to N.J.S.A. 18A:39-28 et seq. to suspend or revoke, as the case may be, the driver's school bus endorsement; and**

- 2. Notify the driver's employer that the driver is ineligible, for the period of suspension or permanently, as the case may be, for continued employment as a school bus driver.**