

CIVIL SERVICE

CIVIL SERVICE COMMISSION

General Rules and Department Organization

Readoption with Amendments: N.J.A.C. 4A:1

Adopted New Rule: N.J.A.C. 4A:1-1.5

Proposed: July 6, 2015 at 47 N.J.R. 1369(a)

Adopted: November 5, 2015 by the Civil Service Commission, Robert M. Czech, Chairperson.

Filed: November 5, 2015 as d. _____, with **non-substantial changes** not requiring additional notice and public comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 11A:1-2, 11A:2-1, 11A:2-3, 11A:2-6, 11A:2-7, 11A:2-11, 11A:2-12, 11A:3-1, 11A:3-6, 11A:4-13, 11A:10-1, 11A:10-3, 11A:10-4, 11A:11-2, 52:14B-3(1), 52:14B-3(3), and 52:14B-4(f); P.L. 2001, c. 5, P.L. 2001, c. 404, P.L. 2003, c. 246, P.L. 2006, c. 103, and P.L. 2008, c. 29; 42 U.S.C. §§ 12101 et seq.; and 28 CFR Part 35.107.

Effective Date: November 5, 2015

Expiration Date: November 5, 2022

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on this readoption with amendments was held on August 19, 2015 in Trenton, New Jersey. Walker Ristau served as hearing officer. No comments were received on the readoption with amendments at that time, and no recommendations were made by the hearing officer. No written comments were received. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Summary of Agency-Initiated Changes: At N.J.A.C. 4A:1-1.2, 3.2(b)7, 3.3(a)5, and 4.3(a) and (d)7, the proposed amendments changing “these rules” to “this chapter” are not being adopted. The changes, which were made by the Office of Administrative Law in its technical review after submission of the Commission’s proposed readoption with amendments, are not appropriate within the context of the rule language in which they appear, which encompasses not just Chapter 1 but Title 4A in scope.

Federal Standards Statement

With the exception of Subchapter 5, N.J.A.C. 4A:1 is not subject to any

Federal requirements or standards. Although the disability discrimination grievance procedure in Subchapter 5 is subject to requirements set forth by the Americans With Disabilities Act (42 U.S.C. §§ 12101 et seq.) and its implementing regulations (28 CFR Part 35.107), it is consistent with, but does not exceed Federal requirements contained therein. Therefore, a Federal standards analysis is not necessary.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:1. Full text of the adopted amendments follows:

CHAPTER 1

GENERAL RULES AND [DEPARTMENT] **AGENCY** ORGANIZATION

SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

4A:1-1.2 Scope, applicability, and invalidation

(a) All appointing authorities and employees subject to Title 11A, New Jersey Statutes, shall comply with [these rules] *[this chapter]* ***these rules***.

(b) [These rules] *[This chapter]* ***These rules*** shall apply only to the career service unless otherwise specified.

(c) [These rules] *[This chapter]* ***These rules*** shall be considered the means by which the statutory purposes of the [merit employment] **civil service** system are carried out. The [Commissioner or the Board] **Civil Service Commission** may relax *[these]* *[a]* ***these*** rule*[s]**s* *[in

this chapter]* for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

(d) If a rule or part of a rule is declared invalid for any reason, the remainder of the [rules] *[chapter]* ***rules*** shall not be affected by such determination.

4A:1-1.4 Petition for promulgating, amending, or repealing rules

(a) Any interested person may file a petition with the [Commissioner] **Chairperson** to promulgate, amend, or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule, and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The [Commissioner] **Chairperson** shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the [Commissioner's] **Chairperson's** decision shall be filed with the Office of Administrative Law pursuant to N.J.A.C.

1:30-[3.6]4.2.

4A:1-1.5 Rulemaking procedures

(a) **After a rule proposal has been approved for publication by the**

Civil Service Commission, the Commission shall file the notice of proposal with the Office of Administrative Law for public notice and comment, and shall make the notice of proposal available by:

1. Mailing or e-mailing it to interested persons or persons who have made a timely request for it;

2. Distributing it to the Commission's subscription-based, electronic mailing list;

3. Distributing it to the news media maintaining a press office in the State House Complex; and

4. Publishing it on the Commission website, no later than the date of publication of the notice in the New Jersey Register, which shall satisfy the additional method of publicity requirement set forth in N.J.A.C. 1:30-5.2(a)6.

SUBCHAPTER 2. RECORDS

4A:1-2.1 [Department of Personnel] **Civil Service Commission** access to appointing authority records and information

Appointing authorities shall provide [Department of Personnel] **Civil Service Commission** representatives free access to their premises and to requested records and information.

4A:1-2.2 Public records

(a) The following [Department of Personnel] **Civil Service Commission** records shall be public:

1. An individual's name, title, salary, compensation, dates of government service, and reason for separation;

2. Information on specific educational or medical qualifications required for employment, **but not any information relating to an individual's medical, psychiatric, or psychological history, diagnosis, treatment, or evaluation;**

3. Final orders of the [Commissioner or Board] **Commission;** and

4. Other records which are required by law to be made, maintained, or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., [as amended and supplemented,] **or** any other statute, rule, [promulgated under the authority of any statute or] Executive Order of the Governor, resolution of both houses of the Legislature, Rule of court, or any Federal law[, Federal] **or** regulation [or Federal order], the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq.[, as amended and

supplemented]:

1. Appeal files in [Merit System Board, Commissioner of Personnel] **any Civil Service Commission** and Division of Equal Employment Opportunity and Affirmative Action matters, including written submissions of the parties and all other related documentation used to make an administrative determination in these matters. However, final **administrative** decisions of the [Board and the Commissioner, including the bases for these decisions,] **Commission** shall be considered public records.

(d) See N.J.A.C. 4A:4-2.16 concerning examination records.

SUBCHAPTER 3. ORGANIZATION

4A:1-3.2 Chairperson

(a) The Chairperson shall:

1. Serve as chairperson of the Civil Service Commission; and
2. Serve as the administrator, the chief executive officer, and the appointing authority of the Commission, as well as the request officer of the Commission, within the meaning of such term as defined in P.L. 1944, c. 112, [§1] § 1.

(b) The Chairperson, on behalf of the Commission, shall:

1. Maintain a management information system to implement Title 11A, New Jersey Statutes;

2. Establish necessary programs and policies for the State and local service;

3. Between meetings of the Commission, provide for interim remedies or relief in a pending appeal where warranted, and review requests for interlocutory review of an order or ruling by an administrative law judge;

4. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations, and other appropriate groups;

5. Make required reports to the Governor and Legislature;

6. Approve appointments in the State and local service; and

7. Perform such other duties as prescribed by law and [these rules]

[this chapter] ***these rules***.

4A:1-3.3 Civil Service Commission

(a) The Civil Service Commission shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;

2. Render final administrative decisions on appeals and on other matters referred by the Chairperson;

3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the

adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;

4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity;

5. Perform such other duties as prescribed by law and [these rules] *[this chapter]* ***these rules***.

SUBCHAPTER 4. DELEGATION, CONSOLIDATION, AND PILOT PROGRAMS

4A:1-4.1 Delegation to appointing authorities

(a) The [Commissioner] **Chairperson** may delegate to an appointing authority one or more of the following functions:

1. Classifying and reclassifying positions;
2. Announcing examinations and collecting applications;
3. Administering examinations prepared by [the Department of Personnel] **Civil Service Commission staff**;
4. Implementing promotions upon waiver of competitive examination;
5. Certifying lists of eligibles; and
6. Other technical personnel functions.

(b) A delegation shall be in writing, designating the appointing authority representative who will be accountable for the delegation, and signed by the [Commissioner] **Chairperson**. Appointing authority employees in carrying

out delegated functions are also responsible to the [Department of Personnel] **Chairperson** in performing such functions. The delegation memorandum shall contain:

1. The functions to be delegated;
2. The specific manner in which the delegation will be implemented;
3. The [Department of Personnel] **Civil Service Commission** representative who will have primary responsibility for supervision of the delegation;
4. The duration of the delegation[, which in no event shall exceed three years, but may be renewed]; and
5. Provisions for appropriate notice advising of the delegation and stating the name, address, and telephone number of the representative of the appointing authority and [Department of Personnel] **Civil Service Commission** employee to be contacted in case of complaints.

(c) [Department of Personnel] **Commission** staff may be assigned to assist in performing the delegated functions.

(d) The [Commissioner] **Chairperson** may cancel, modify, or limit the delegation order at any time.

(e) The following functions may not be delegated:

1. The construction of an examination;
2. Appeal decisions of [the Department, Commissioner or Board] **this agency, the Chairperson, or the Civil Service Commission**; and

3. A function of the [Board] **Commission set forth in N.J.A.C. 4A:1-**

3.3.

(f) In local service the delegation must be approved by the affected appointing authority when the delegation requires substantial and identifiable costs. Costs are considered substantial when they result in a significant increase in agency expenses for staff, materials, and facilities after offset by savings effected by the delegation.

(g) The [Department of Personnel] **Chairperson or designee** will conduct appropriate audits of delegated functions.

4A:1-4.2 Consolidation State service

(a) The [Commissioner] **Civil Service Commission**, in consultation with affected departments, may direct the temporary or permanent consolidation and coordination of personnel, training, and related functions in the State service.

(b) A consolidation order may affect one or more State agencies and shall designate the functions to be consolidated.

(c) Consolidation may be directed for one or more of the following reasons:

1. An appointing authority has demonstrated inadequate or improper performance;
2. Economy or efficiency; or
3. Emergent situations.

(d) To effectuate a consolidated function, the [Commissioner] **Commission** may transfer necessary employees, positions, funding, and equipment to the [Department of Personnel] **agency** from other State departments.

4A:1-4.3 Pilot programs

(a) The [Commissioner] **Civil Service Commission** may establish pilot programs, not to exceed one year, outside of the provisions of Title 11A, New Jersey Statutes, and [these rules] *[this chapter]* ***these rules***.

(b) Pilot programs may include, but are not limited to, the following:

1. Recruitment and selection;
2. Classification; and
3. Job sharing.

(c) Appointing authorities that request a pilot program shall consult with affected negotiations representatives prior to submission of a proposal.

(d) A proposal for a pilot program shall be submitted to the [Commissioner]

Chairperson or designee and include:

1. A description of the program;
2. The individuals affected by the program;
3. The duration of the program;
4. The anticipated benefits of the program, including an explanation of how the program furthers the purposes of Title 11A, New Jersey Statutes;
5. A summary of appointing authority consultations with negotiations

representatives;

6. Evaluation criteria;

7. A statement identifying the sections, if any, of [these rules] *[this chapter]* ***these rules*** or of Title 11A, New Jersey Statutes with which the program is at variance; and

8. Such other information as required by the [Commissioner]

Chairperson or designee.

(e) The [Commissioner] **Chairperson or designee** shall verify that proper notice to and consultations with affected negotiations representatives have taken place.

(f) The [Commissioner] **Commission** may accept, modify, or reject the program and establish appropriate conditions.

SUBCHAPTER 5. DISABILITY DISCRIMINATION GRIEVANCE
PROCEDURE

4A:1-5.1 Definitions

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

"ADA" means the Americans with Disabilities Act, 42 U.S.C.[A.] §§ 12101 et seq.

"Agency" means the New Jersey [Department of Personnel] **Civil Service Commission.**

"Designated decision maker" means the [Commissioner of Personnel] **Chairperson** or his or her designee.

4A:1-5.2 Purpose

(a) [These rules are] **This subchapter is** adopted by the agency in satisfaction of the requirements of the ADA and regulations promulgated pursuant thereto, 28 [C.F.R.] **CFR** 35.107.

(b) The purpose of [these rules] **this subchapter** is to establish a designated coordinator whose duties shall include assuring that the agency complies with and carries out its responsibilities under the ADA. Those duties shall also include the investigation of any complaint filed with the agency pursuant to N.J.A.C. 4A:1-5.5 through 5.8.

4A:1-5.3 Required ADA notice

In addition to any other advice, assistance, or accommodation provided, a copy of the following notice shall be given to anyone who inquires regarding the agency's compliance with the ADA or the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency.

AGENCY NOTICE OF ADA PROCEDURE

The agency has adopted an internal grievance procedure providing for

prompt and equitable resolution of grievances alleging any action prohibited by the U.S. Department of Justice regulations implementing Title 11 of the Americans with Disabilities Act. Title 11 states, in part, that "no otherwise qualified disabled individual shall, solely by reason of such disability, be excluded from participation in, be denied the benefits of or be subjected to discrimination" in programs or activities sponsored by a public entity.

Rules describing and governing the internal grievance procedure can be found in the New Jersey Administrative Code[,] at N.J.A.C. 4A:1-5. As those rules indicate, grievances should be addressed to the agency's designated ADA Coordinator, who has been designated to coordinate ADA compliance efforts, at the following address:

ADA Coordinator

New Jersey [Department of Personnel] **Civil Service Commission**

PO Box 317

Trenton, New Jersey 08625

1. A grievance may be filed in writing or orally, but should contain the name and address of the person filing it, and briefly describe the alleged violation. A form for this purpose is available from the designated ADA coordinator. In cases of employment related grievances, the procedures established by the [Department of Personnel,] **Civil Service Commission** at N.J.A.C. 4A:7-1.1 et seq., will be followed where applicable.

2. A grievance should be filed promptly within 30 days after the

grievant becomes aware of the alleged violation. (Processing of allegations of discrimination which occurred before this grievance procedure was in place will be considered on a case-by-case basis.)

3. An investigation, as may be appropriate, will follow the filing of a grievance. The investigation will be conducted by the agency's designated ADA Coordinator. The rules contemplate informal but thorough investigations, affording all interested persons and their representatives, if any, an opportunity to submit evidence relevant to a grievance.

4. In most cases, a written determination as to the validity of the grievance and a description of the resolution, if any, will be issued by the designated decision maker and a copy forwarded to the grievant no later than 45 days after its filing.

5. The ADA coordinator will maintain the files and records of the agency relating to the grievances filed.

6. The right of a person to a prompt and equitable resolution of the grievance filed hereunder will not be impaired by the person's pursuit of other remedies such as the filing of an ADA grievance with the responsible Federal department or agency or the New Jersey Division on Civil Rights. Use of this grievance procedure is not a prerequisite to the pursuit of other remedies.

7. The rules will be construed to protect the substantive rights of interested persons, to meet appropriate due process standards and to assure

that the agency complies with the ADA and implementing Federal rules.

4A:1-5.4 Designated ADA coordinator

(a) The designated coordinator of ADA compliance and complaint investigation for the agency is:

ADA Coordinator

New Jersey [Department of Personnel] **Civil Service Commission**

PO Box 317

Trenton, New Jersey 08625

(b) All inquiries regarding the agency's compliance with the ADA and the availability of accommodation which would allow a qualified individual with a disability to receive services or participate in a program or activity provided by the agency should be directed to the designated coordinator identified in (a) above.

(c) All grievances alleging that the agency has failed to comply with or has acted in a way that is prohibited by the ADA should be directed to the designated ADA coordinator identified in this section, in accordance with the procedures set forth in N.J.A.C. 4A:1-5.5 through 5.8.

4A:1-5.5 Grievance procedure

A grievance alleging that the agency has failed to comply with the ADA or has acted in a way that is prohibited by the ADA shall be submitted either in

writing or orally to the designated ADA coordinator identified in N.J.A.C. 4A:1-5.4 within 30 days of the grievant becoming aware of the alleged violation. A grievance alleging employment discrimination will be processed pursuant to the rules of the [Department of Personnel,] **Civil Service Commission** at N.J.A.C. 4A:7[-1.1 through 3.4], if those rules are applicable.