

Public Notice

Education

Commissioner of Education

Notice of Receipt of Petition for Rulemaking

Appeals

Who May Appeal

N.J.A.C. 6A:4-2.1

Petitioner: Oscar Feijoo.

Take notice that on July 18, 2024, the Acting Commissioner of Education (Commissioner) received a petition for rulemaking from the above petitioner, requesting the Commissioner amend N.J.A.C. 6A:4-2.1(a) to include another group of appellants for State Board of Examiners' decisions.

N.J.A.C. 6A:4-2.1(a) states, in part, that any party aggrieved by a State Board of Examiners decision suspending or revoking a certificate may appeal to the Commissioner in accordance with N.J.A.C. 6A:4. N.J.A.C. 6A:4-2.1(a)1 states that any party aggrieved by a State Board of Examiners decision denying issuance of a certificate shall proceed in accordance with N.J.A.C. 6A:3, Controversies and Disputes. The remainder of N.J.A.C. 6A:4-2.1(a) applies to actions by the School Ethics Commission.

The petitioner seeks to amend N.J.A.C. 6A:4-2.1(a) to add new (a)3 as follows: Any party aggrieved by a State Board of Examiners' decision to include the criminal record of a certificate holder, as opposed to language that reflects N.J.A.C. 6A:9B-4.4(a)1, on a docket revoking the certificate holder's certificate(s) in accordance with N.J.A.C. 6A:9B-4.4(a)1 due to other just causes in the certificate holder's personal life that in no way touched the certificate holder's certificated position, and the certificate holder's criminal record has been granted an order of expungement by a judge of a criminal court in the State of New Jersey in accordance with N.J.S.A. 2C:52-2, Indictable Offenses.

The petitioner's request states that the requested change would allow a revoked certificate holder to file an appeal to have the language in the docket (referred to as a "decision" at N.J.A.C. 6A:9B) changed

after an order of expungement is granted in accordance with N.J.S.A. 2C:52-2 and the State Board of Examiners ensures that the crime was not committed using the certificate holder's position.

The petitioner's request also states that revoked certificate holders who committed a crime in their personal lives and not in their professional roles as certificate holders are aggrieved by the State Board of Examiners because it includes, on the New Jersey Department of Education's (Department) website, their complete criminal records on a decision revoking their certificates pursuant to N.J.A.C. 6A:9B-4.7(d). The petitioner's request further states that this group of appellants would have been granted an order of expungement of their criminal records by a New Jersey criminal court judge, pursuant to N.J.S.A. 2C:52-2. The petitioner's request also states that the requested change would provide revoked certificate holders relief from the injustice of still having their criminal record made public on the Department's website even though their criminal records have been expunged.

The petitioner's request further states that the requested change respects the regulations governing the State Board of Examiners and N.J.S.A. 2C, New Jersey Code of Criminal Justice by changing the revocation decision to replace the N.J.S.A. 2C language that describes the criminal record with language from the New Jersey Administrative Code. The petitioner's request also states that this change can be accomplished by amending the decision to replace all information detailing exact dates with just the month in which the grounds for revocation event took place and all language describing or alluding to the crime with "other just cause" and "forfeiture" or "disqualification," as applicable, pursuant to N.J.A.C. 6A:9B-4.4(a)1. The petitioner's request further states that the change would expunge the revoked certificate holders' criminal record in accordance with N.J.S.A. 2C:52-2 and still uphold the State Board of Examiners' decision to revoke the certificate holders' certificates pursuant to N.J.A.C. 6A:9B-4.4(a)1.

The petitioner's request also states that the requested change would ensure relief to revoked certificate holders who committed a crime in their personal lives on their personal time and the crime had nothing to do with their certificated position. The petitioner's request further states that

N.J.S.A. 2C:52-2.b states that “[r]ecords of conviction for any crime committed by a person holding any public office, position or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof and any conspiracy or attempt to commit such a crime shall not be subject to expungement if the crime involved or touched such office, position or employment.” The petitioner’s request also states that the existing process denies people’s rights to expunge their criminal records because they met the requirements for certificates issued by the State Board of Examiners and their criminal records are published online in State Board of Examiner decisions, which, the petitioner contends, leads to revoked certificate holders’ criminal records not truly being expunged as allowed pursuant to N.J.S.A. 2C:52-2.

The petitioner’s request states that the change sought at N.J.A.C. 6A:4-2.1(a) is within the agency’s authority because the requested change would only replace language at N.J.S.A. 2C with language at N.J.A.C. 6A:9B, which would ensure justice in the administration of both statutes and rules. The petitioner’s request also states that the requested change also would follow N.J.A.C. 6A:9B-4.7(d), which requires all revocation and/or suspension decisions of the State Board of Examiners to be published, publicly available, and to contain detailed information on the nature of the conduct and the penalty for it. The petitioner also states that the request would respect N.J.A.C. 6A:4-4.1(a), which requires the Commissioner, in determining appeals from State Board of Examiners or the School Ethics Commission, to ascertain whether the decision is supported by sufficient credible evidence in the record. The regulation also states that the Commissioner shall not disturb the decision unless the appellant has demonstrated the State Board of Examiners or the School Ethics Commission acted in a manner that was arbitrary, capricious, or contrary to law.

In accordance with N.J.A.C. 1:30-4.2, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition as it relates to N.J.A.C. 6A:14-2.7.