

EDUCATION

STATE BOARD OF EDUCATION

Controversies and Disputes

Proposed Amendments: N.J.A.C. 6A:3-1.1, 1.2, 1.4, 8.1, and 12.1

Authorized By: Lamont O. Repollet, Ed. D., Commissioner, Department of Education, Secretary,
State Board of Education.

Authority: N.J.S.A. 18A:6-9.

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

Proposal Number: PRN 2019-010.

Submit written comments by March 8, 2019, to:

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The agency proposal follows:

Summary

The Department of Education (Department) proposes to amend N.J.A.C. 6A:3, Controversies and Disputes. This chapter sets forth the rules of procedure established by the Department for the filing of petitions with the Commissioner of Education (Commissioner) to hear

and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

The proposed amendments will reduce the procedural requirements when filing documents with the Office of Controversies and Disputes and will allow parties to submit documents to the Department electronically. Other amendments are proposed to increase clarity and remove obsolete or confusing references in the rules.

The following summarizes the proposed amendments:

Subchapter 1. General Provisions

N.J.A.C. 6A:3-1.1 Purpose and Scope

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

The Department proposes an amendment at N.J.A.C. 6A:3-1.1(b)6, to amend the statutory cross-reference to N.J.S.A. 18A:39-26 et seq. The proposed amendment is necessary because the “School Bus Safety Act” is codified at N.J.S.A. 18A:39-26. The same amendment is proposed at the heading of Subchapter 12 and N.J.A.C. 6A:3-12.1(a) and (c)1.

The Department proposes an amendment to N.J.A.C. 6A:3-1.1(d) to delete “or requests for relief arising out of legal decisions of the State Board of Education” because it is no longer applicable. As a result of P.L. 2008, c. 36, the Commissioner has jurisdiction over all controversies and disputes arising under State school laws. The State Board of Education has not rendered any legal decisions since 2008.

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

This section defines words and terms used throughout the chapter.

The Department proposes an amendment to the definition of “filing,” to replace “an original paper” with “a document, in either paper or electronic form” and “by facsimile” with “by regular or electronic mail,” respectively. The Department also proposes to delete the requirements that facsimile filings must be pre-approved, not exceed 10 pages, conform to submission requirements, and be accompanied by a statement that the original document will follow by mail or hand delivery. The proposed amendments will allow parties to submit documents to the Department electronically.

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

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

The Department proposes an amendment at N.J.A.C. 6A:3-1.4(a) to delete “notarized,” to clarify that statements of verification or certification in lieu of affidavits do not need to be notarized. The Department also proposes to delete within the subsection the notary public signature in the sample petition format provided.

Subchapter 8. Appeals from District Board of Education Determinations of Entitlement to Attend School Based Upon Domicile or Residency in District

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

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

The Department proposes to amend N.J.A.C. 6A:3-8.1(a) to replace references to specific PDF and Word documents with “forms provided by the Department.” The proposed amendment

reflects that all forms will be available on the Department’s website in the same format to enable electronic filing and to allow the Department to relocate the forms, as necessary, without a regulatory amendment.

The Department also proposes amendments at N.J.A.C. 6A:3-8.1(a)2 to replace “Bureau” with “Office” to reflect the correct title. The Department also proposes to add “or electronic mail” after “by facsimile” to enable the Office to alert via e-mail, the district board of education and executive county superintendent of a residency appeal.

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

Social Impact

The social impact of the proposed amendments will be positive because they will allow for the electronic filing of petitions while continuing to ensure consistency, fairness, and due process to all members of the education community and the general public in connection with the adjudication of all controversies and disputes arising under applicable school laws. The proposed amendments are intended to make the controversies and disputes process well-defined, accessible, timely, and consistent with State law.

Economic Impact

The proposed amendments will not impose an economic burden on parties initiating proceedings before the Commissioner to hear and decide controversies and disputes arising under applicable school laws. These proposed amendments will likely alleviate administrative costs to the petitioner and respondent associated with the filing and adjudication of matters before the Commissioner of Education.

Federal Standards Statement

The proposed amendments will not be inconsistent with, nor exceed any, Federal standards or requirements, since no such standards or requirements address the mechanism prescribed by this chapter.

Jobs Impact

The Department anticipates no job generation or loss in other sectors of the economy as a result of the proposed amendments.

Agriculture Industry Impact

The proposed amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

Certain entities that qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., such as approved private schools for students with disabilities and small companies providing services or materials to district boards of education, are expected to comply with the chapter's procedures, if they choose to initiate, or are named as a party in, a dispute arising under applicable school laws. It is unlikely that a small business would initiate or be party to the type of proceeding governed by the chapter. However, the burden of compliance with the chapter's rules is minimal and is offset by the benefit of having a clearly defined mechanism for adjudication of controversies and disputes. The proposed amendments impose no reporting, recordkeeping, or further compliance requirements on small businesses; rather, the proposed amendments could alleviate the burden of mailing or faxing required filings by allowing for electronic submission.

Housing Affordability Impact Analysis

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood the proposed amendments would evoke a

change in the average costs associated with housing because the proposed amendments will allow for the electronic submission of filings related to controversies and disputes arising under school laws.

Smart Growth Development Impact Analysis

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood the proposed amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the proposed amendments allow for the electronic submission of filings related to controversies and disputes arising under school laws.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood that the proposed amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the proposed amendments concern controversies and disputes arising under State school laws and do not have an impact on the New Jersey criminal code.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

6A:3-1.1 Purpose and scope

- (a) (No change.)
- (b) This chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes:
 - 1.–5. (No change.)

6. Hearings prior to suspension or revocation of school bus driver endorsements
pursuant to N.J.S.A. 18A:39-[28]**26** et seq.

- (c) (No change.)
- (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, **or** interlocutory decisions of the State Board of Examiners or the School Ethics Commission[, or requests for relief arising out of legal decisions of the State Board of Education]. In accordance with P.L. 2008, c. 36, such appeals and requests shall be made pursuant to the provisions of N.J.A.C. 6A:4.

6A:3-1.2 Definitions

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

...

“Filing” means receipt of [an original] **a document, in either paper or electronic form**, by an appropriate officer of the Department. [With the prior approval of the Director of the Office of Controversies and Disputes, and generally up to a maximum of 10 pages, filings] **Filings** may be made by **regular or electronic mail, or** facsimile [when they otherwise conform to requirements for submission and are accompanied by a statement that the original document will follow by mail or hand delivery]. Parties requesting return of a stamped copy of any filing must include an extra copy of the document, together with a self-addressed envelope stamped

with sufficient postage for this purpose. Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.

...

6A:3-1.4 Format of petition of appeal

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

(NAME OF PETITIONER(S)), : BEFORE THE COMMISSIONER
PETITIONER(S), : OF EDUCATION OF NEW JERSEY

V.

(NAME OF RESPONDENT(S)), : PETITION
RESPONDENT(S). :

Petitioner, _____, residing at _____, whose telephone number is _____, fax number is _____ and email address is _____,

hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent whose address is _____, pursuant to the authority

of the Commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

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

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

Signature of petitioner or
representative

Date _____

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

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

Signature of petitioner

[Sworn and subscribed to before me this

_____ day of _____, _____
(month) (year)

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

(b)–(d) (No change.)

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

6A:3-8.1 Exceptions to general appeal requirements

- (a) Appeals of district board of education determinations with respect to entitlement to attend school pursuant to N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22 shall generally proceed in accordance with the provisions of N.J.A.C. 6A:3-1, except as set forth below.
1. Petitions in letter form shall be accepted from pro se petitioners, provided that such petitioners use the form provided [at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word)] **by the Department** or prepare a letter wherein they:
 - i.–iv. (No change.)
 2. Petitions from pro se petitioners need not be served on the respondent district board of education, but may be filed solely with the Office of Controversies and

Disputes (Office). Upon the receipt of any such petition, the [Bureau] **Office** will transmit, by facsimile **or electronic mail**, 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.–ii. (No change.)

3.–4. (No change.)

(b)–(g) (No change.)

SUBCHAPTER 12. HEARINGS PRIOR TO SUSPENSION OR REVOCATION OF SCHOOL BUS DRIVER ENDORSEMENT PURSUANT TO N.J.S.A. 18A:39-[28]26 ET SEQ.

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

- (a) Where a school bus driver has been notified by the Department's Criminal History Review Unit that a determination has been made that suspension or revocation, as the case may be, of the driver's school bus endorsement is warranted pursuant to N.J.S.A. 18A:39-[28]**26** 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.-2. (No change.)

(b) (No change.)

(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]26 et seq., to suspend or revoke, as the case may be, the driver's school bus endorsement; and
2. (No change.)