

## **Notice of Proposal for N.J.A.C. 6A:3, Controversies and Disputes**

The following is the accessible version of the notice of proposal for the readoption with amendments at N.J.A.C. 6A:3. The notice of proposal document includes two sections – [summary](#) and [proposed amendments](#).

## **Education**

### **State Board of Education**

#### **Controversies and Disputes**

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

Authorized By: New Jersey State Board of Education, Angelica Allen-McMillan, Ed.D., Acting Commissioner, Department of Education, and Acting Secretary, New Jersey State Board of Education.

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

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

Proposal Number: PRN 2023-119.

Submit written comments by February 16, 2024, to:

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Division of Legal and External Services

New Jersey Department of Education

PO Box 500

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Email: [chapter3@doe.nj.gov](mailto:chapter3@doe.nj.gov)

The agency proposal follows:

#### **Summary**

The Department of Education (Department) proposes to readopt with amendments N.J.A.C. 6A:3, Controversies and Disputes. In accordance with N.J.S.A. 52:14B-5.1, the chapter was scheduled to expire on August 7, 2024. As the Department submitted this notice of

proposal to the Office Of Administrative Law prior to that date, the expiration date was extended 180 days to February 3, 2025, pursuant to N.J.S.A. 52:14B-5.1.c(2).

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

The procedures set forth in the rules proposed for readoption with amendments remain substantially the same as existing rules. Unless otherwise noted in this Summary, all proposed amendments are to eliminate gender-specific pronouns in this chapter, correct cross-references to the New Jersey Administrative Code, update names of Department offices, or for clarity or stylistic or grammatical improvement.

The following summarizes the chapter and the proposed amendments.

## **Subchapter 1. General Provisions**

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

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

The Department proposes new N.J.A.C. 6A:3-1.1(e) to specify that N.J.A.C. 6A:3 does not apply to matters concerning streamline tenure of charter school employees, which are decided by the Commissioner pursuant to N.J.A.C. 6A:11-6.4.

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

This section defines terms used throughout the chapter.

The Department proposes to amend the definitions of “day” and “filing” to eliminate the statements that filings received after 4:15 P.M. shall be deemed filed on the next business day. The increase in popularity of filing through email has led to a greater number of submissions outside of standard business hours and the time-of-day requirement has caused confusion to members of the public, particularly *pro se* petitioners. The deleting of the provision will allow the date of submission to be the same as the date of filing to avoid confusion. In addition, the term “legal” holiday is added to the time calculation of days.

The Department proposes to amend the definition of “district board of education” to add the board of trustees of a renaissance school project, consistent with N.J.S.A. 18A:36C-7, which designates renaissance schools as public schools.

The Department proposes to amend the definition of “filing” to delete the option to file by facsimile because the Office of Controversies and Disputes no longer uses facsimile to communicate with parties, as email filing is free and more accessible for *pro se* petitioners than facsimile. The Department proposes throughout the chapter to delete references to “facsimile” or “fax numbers” and requirements to provide or update fax numbers for the same reason.

### **N.J.A.C. 6A:3-1.3 Filing and Service of Petition of Appeal**

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

The Department proposes to amend N.J.A.C. 6A:3-1.3(a) to delete “original” before “petition” and to add that electronic filings must be submitted to the email address designated by the Office of Controversies and Disputes. Petitioners will still have the option to submit a petition and supporting materials to the specified mailing address.

The Department proposes an amendment at N.J.A.C. 6A:3-1.3(h)2 to delete the

requirement that an affidavit of service must be sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation. This provision was relaxed during the COVID-19 pandemic due to difficulties in obtaining notary services, without issue. The proposed amendment will codify the change. The Department proposes to amend N.J.A.C. 6A:3-2.2 to delete the requirement that a petition for declaratory ruling must be sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation for the same reason.

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

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

#### **N.J.A.C. 6A:3-1.5 Filing and Service of Answer**

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

#### **N.J.A.C. 6A:3-1.6 Emergent Relief or Stay**

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

#### **N.J.A.C. 6A:3-1.7 Amendment of Petition and Answer**

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

#### **N.J.A.C. 6A:3-1.8 Permission to Intervene or Participate**

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

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

This section provides that parties to contested cases may represent themselves or be represented consistent with the applicable rules of the Office of Administrative Law (OAL).

#### **N.J.A.C. 6A:3-1.10 Dismissal or Transfer of Petition**

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

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

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

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

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

### **N.J.A.C. 6A:3-1.13 Settlement or Withdrawal of Contested Matter**

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

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

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

The Department proposes to amend N.J.A.C. 6A:3-1.14(a) to clarify that the provision applies only to matters that have been transmitted to the OAL.

The Department proposes to delete N.J.A.C. 6A:3-1.14(c), which provides that a Commissioner's decision is deemed filed three days after the date of mailing to the parties. The regulation no longer is necessary because decisions are emailed.

### **N.J.A.C. 6A:3-1.15 Motion for Stay, Reconsideration, or Clarification**

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

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

This section authorizes the Commissioner to relax any of the chapter's rules that are not based on specific statutory or OAL requirements, in cases where the Commissioner determines that strict adherence to such rules would be inappropriate, unwarranted, or likely to result in injustice.

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

This section authorizes the Commissioner to award prejudgment and postjudgment

interest, and establishes the standards, rates, and method of application for such awards.

## **Subchapter 2. Declaratory Rulings**

### **N.J.A.C. 6A:3-2.1 Petition for Declaratory Ruling**

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

### **N.J.A.C. 6A:3-2.2 Format of Petition for Declaratory Ruling**

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

### **N.J.A.C. 6A:3-2.3 Dissemination of Declaratory Rulings**

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

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

### **N.J.A.C. 6A:3-3.1 Commissioner's Order to Show Cause**

This section prescribes the circumstances under which the Commissioner may issue an order to show cause.

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

### **N.J.A.C. 6A:3-4.1 Withholding Salary Increment**

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

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

### **N.J.A.C. 6A:3-5.1 Filing of Written Charges and Certificate of Determination**

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

### **N.J.A.C. 6A:3-5.2 Format of Certificate of Determination**

This section prescribes the requirements for the certificate of determination.

### **N.J.A.C. 6A:3-5.3 Filing and Service of Answer to Written Charges**

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

### **N.J.A.C. 6A:3-5.4 Filing and Certification of Charges Against Tenured Employees in the Departments of Children and Families, Corrections, and Education, and in the Juvenile Justice Commission**

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

### **N.J.A.C. 6A:3-5.5 Determination of Sufficiency and Transmittal for Hearing**

This section prescribes the timeline for the Commissioner to determine whether tenure charges are sufficient and the procedures to be used once that determination is made.

### **N.J.A.C. 6A:3-5.6 Withdrawal, Settlement, or Mooting of Tenure Charges**

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

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

This section states that arbitrators' expenses shall be submitted, invoiced, and paid in accordance with the current New Jersey Department of the Treasury, Office of Management and Budget Circular, setting forth the State's regulations regarding travel.

The Department proposes an amendment to update the issuance date of the Office of Management and Budget Circular regarding travel.

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

### **N.J.A.C. 6A:3-6.1 Application for Termination or Change in Allocation**

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

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

### **N.J.A.C. 6A:3-7.1 Filing and Service of Petition**

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

### **N.J.A.C. 6A:3-7.2 Answer; Record on Appeal**

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

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

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

### **N.J.A.C. 6A:3-7.4 Applications for Emergent Relief**

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

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

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

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

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

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

**N.J.A.C. 6A:3-8.1 Exceptions to General Appeal Requirements**

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

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

**N.J.A.C. 6A:3-9.1 Commissioner Review of Penalty Recommendations**

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

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

**N.J.A.C. 6A:3-10.1 Application to Issue Bonds Following Defeated Referenda**

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

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

**N.J.A.C. 6A:3-11.1 Recording of Assessments on Judgment Docket of Superior Court**

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

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

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

**N.J.A.C. 6A:3-12.1 Request for Hearing upon Notice of Impending Suspension or Revocation**

This section sets forth the process for requesting a hearing prior to suspension or

revocation of a school bus driver endorsement, pursuant to N.J.S.A. 18A:39-28 et seq.

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

### **Social Impact**

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

### **Economic Impact**

The rules proposed for readoption with amendments will not impose an economic burden on parties initiating proceedings before the Commissioner to hear and decide controversies and disputes arising pursuant to applicable school laws. The only costs associated with this chapter are those related to the preparation of required papers and representation by legal counsel if a party elects, or is required to be represented by law. There are no filing fees, nor is the Commissioner authorized to award attorney fees or damages.

### **Federal Standards Statement**

The rules proposed for readoption with amendments will not be inconsistent with nor exceed any Federal standard or requirement because no Federal standard or requirement addresses the chapter's rules.

### **Jobs Impact**

The Department anticipates no job generation or loss of jobs as a result of the rules proposed for readoption with amendments.

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Analysis**

Certain entities that qualify as small businesses pursuant to 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 a petition, or are named as a party in one, although the precise number of potentially-impacted businesses is difficult to estimate. It is unlikely that a small business would initiate or be party to the type of proceeding governed by the chapter. However, the burden of compliance with the chapter's rules is minimal and is offset by the benefit of having a clearly defined mechanism for adjudication of controversies and disputes. Additionally, a party to an appeal can employ an attorney or other permitted person for purposes of representation, although professional services are not required pursuant to the chapter's rules. The precise cost of compliance and professional services is difficult to estimate, and will vary on a case-by-case basis. In all other respects, the rules proposed for readoption with amendments impose no reporting, recordkeeping, or further compliance requirements on small businesses.

### **Housing Affordability Impact Analysis**

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

## Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood the rules proposed for readoption with 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 rules proposed for readoption with amendments set forth the procedure for filing petitions with the Commissioner to hear and decide controversies and disputes arising pursuant to school laws in accordance with N.J.S.A. 18A:6-9 et seq.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

There is an extreme unlikelihood that the rules proposed for readoption with amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with amendments set forth the procedure for filing petitions with the Commissioner to hear and decide controversies and disputes arising pursuant to school laws in accordance with N.J.S.A. 18A:6-9 et seq. Accordingly, no further analysis is required.

**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)-(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. 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.

**(e) This chapter shall not apply to disputes concerning streamline tenure of charter school employees. In accordance with N.J.S.A. 18A:36A-14.e, such appeals shall be made pursuant to N.J.A.C. 6A:11-6.4.**

#### 6A:3-1.2 Definitions

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

...

“Contested case” means an adversarial proceeding in which the legal rights, duties, obligations, privileges, benefits, or other legal relations of specific parties are required to be adjudicated by the Commissioner after opportunity for agency hearing pursuant to N.J.S.A. 18A:6-9, [N.J.S.A.] 52:14B-1 et seq., [(Administrative Procedure Act)], and N.J.A.C. 1:1, [(New Jersey Uniform Administrative Procedure Rules)].

“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 **legal** 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 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 **or a renaissance school project**.

“Filing” means receipt of a document, in either paper or electronic form, by an appropriate officer of the Department. Filings may be made by regular or electronic mail[, or facsimile]. 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.]

...

“[Pro se] **Pro se**” means a person who acts on [his or her] **their** own behalf without an attorney or other nonlawyer representative as permitted by rules of the OAL.

...

#### 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] **pursuant to** the school laws, a petitioner shall prepare a petition of appeal conforming to the requirements [of] **at** 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] **email** addresses, where available[]], of the petitioner and each respondent, and the [original] petition and supporting materials, if any, [with] **by emailing the documents to the email address designated by the Office of Controversies and Disputes or mailing the documents to** the Commissioner c/o the Director, Office of Controversies and Disputes, New Jersey 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 that have not been served upon each respondent.

1. Any petition filed jointly by three or more petitioners, where the petitioners are [pro se] *pro se*, shall designate one petitioner as a representative of the group for purposes of receipt of service for answer(s), initial correspondence, pretransmittal notices, and other communications prior to the agency's determination that the matter is a contested case. [In subsequent proceedings, however, if petitioners are] **Petitioners** acting as a group[, the group] shall comply with applicable rules of the OAL regarding representation **in subsequent proceedings.**

2. (No change.)

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

(b) A petitioner shall name as a party any person or entity indispensable to the hearing of a contested case. Failure to name an indispensable party may be grounds for dismissal of the petition pursuant to N.J.A.C. 6A:3-1.10.

1. In the case of petitions by unsuccessful bidders challenging an award of bid by a district board of education [under] **pursuant to N.J.S.A. 18A:18A-1 et seq.**, the Public School Contracts Law [(N.J.S.A. 18A:18A-1 et seq.)], the successful bidder shall be named as a respondent.

(c) A petitioner claiming benefits [under] **pursuant to** N.J.S.A. 18A:30-2.1 shall include a copy of the ruling or settlement agreement issued by the Division of Workers' Compensation **(Division)** with respect to the injury underlying the claim or provide reasons why the matter constitutes an exception to the requirement that the Commissioner refrains from exercising jurisdiction until the Division makes a determination of work-related injury.

(d) A petitioner claiming that [his or her] **their** employment was nonrenewed for reasons that are statutorily or constitutionally proscribed shall set forth in the petition at least a minimal factual basis for such allegation(s), consistent with New Jersey Court Rules at R.4:5-2.

(e) Where a petition is filed by or on behalf of a student who is, or who may be as a result of a pending evaluation, subject to the provisions of an individualized education program (IEP) or an accommodation plan pursuant to Section 504 of the Rehabilitation Act, the petition shall so indicate. The petition shall further indicate whether the matter has been concurrently filed with the Department's Office of Special Education [Programs (OSEP)].

1. If a petition appears to raise, in addition to issues within scope of the Commissioner's authority, issues requiring a determination [under] **pursuant to** State statutes or rules governing special education, the Individuals with Disabilities Education Act (IDEA), or Section 504 of the Rehabilitation Act, and the petition has not been concurrently filed with the [OSEP] **Office of Special Education**, it will be docketed by the Office of Controversies and Disputes in accordance with this chapter and also forwarded to [OSEP] **the Office of Special Education** for docketing as a special education matter pursuant to N.J.A.C. 6A:14-2.7. The two offices shall concurrently transmit the matter to the OAL with a request that the OAL initially docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7, except that if the ALJ finds that some or all of the issues raised are within the authority of the Commissioner, the OAL shall additionally or instead, as the case may be, docket the matter as an education (EDU) case and the ALJ shall render an initial decision on such issues as are within the authority of the Commissioner and forward it to the Commissioner for agency review pursuant to applicable rules of the OAL.

2. If a petition appears solely to raise issues requiring a determination [under] **pursuant to** 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 dismissed in accordance with the provisions [of] **at** N.J.A.C. 6A:3-1.10.

(f) [Where] **If** a matter is transferred to the Commissioner by a court, [it shall be the responsibility of] the parties [to ensure] **shall be responsible for ensuring** that the order of

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

(g) (No change.)

(h) Proof of service shall be in the form of one of the following:

1. (No change.)

2. An affidavit of the person making service[, sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation,] indicating the address at which each respondent was served;

3.-4. (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, that is the subject of the requested contested case hearing. This rule shall not apply in instances where a specific statute, regulation, or court order, provides for a period of limitation shorter than 90 days for the filing of a particular type of appeal.

1. (No change.)

2. Pursuant to N.J.S.A. 18A:29-14 and 34:13A-27.d, where an increment withholding dispute has been submitted to the Public Employment Relations Commission **(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] **the petitioner's** 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] **the petitioner** was assigned, shall file a petition within 10 business days of the date of the Department's written notice to petitioner of such finding.

(j) (No change.)

#### 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] **email** address of each petitioner; the name, address, telephone number, and, if available, [fax number and e-mail] **email** address of each party respondent; a statement of the specific allegation(s) and essential facts supporting [them] **the specific allegation(s)** that have given rise to a dispute [under] **pursuant to** the school laws; the relief petitioner is seeking; and a statement of verification or certification in lieu of affidavit for each petitioner. The petition should also cite, if known to petitioner, the section(s) [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] **that** 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] **that** 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] **an** 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

(b) (No change.)

(c) Any party to a controversy or dispute before the Commissioner[,] who is a party to another action before any other administrative agency, arbitration proceeding, or court involving the same or similar issue of fact or law[,] shall indicate the existence of such action or complaint within the petition of appeal or the answer to the Commissioner, as may be appropriate. Failure to so certify may be deemed to be sufficient cause for dismissal of the petition of appeal when, in the

judgment of the Commissioner and/or the ALJ, such failure results in the duplication of administrative procedures for the resolution of a controversy or dispute.

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

(b)–(e) (No change.)

(f) Upon written application by a party, the Commissioner may extend the time for answer, provided that the application was received by the Commissioner prior to the expiration of the initial 20-day period, and provided that a copy of the application was served upon all parties to the contested case.

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

(g)–(h) (No change.)

#### 6A:3-1.6 Emergent relief or stay

(a) (No change.)

(b) A motion for a stay or emergent relief shall be accompanied by a letter memorandum or brief, which shall address the following standards to be met for granting such relief pursuant to *Crowe v. DeGioia*, 90 N.J. 126 (1982):

1.-4. (No change.)

(c) (No change.)

(d) The Commissioner may decide a motion for interim relief or stay prior to any transmittal of the underlying matter to the OAL for hearing. Once a matter has been transmitted, any subsequent motion for emergent relief shall be filed with the Commissioner who shall forward the motion for determination by the OAL in accordance with applicable rules of the OAL.

1. [Where] **If** a matter has already been transmitted to the OAL, [at the same time the motion is filed with the Commissioner,] a copy of the motion and supporting memorandum or brief shall concurrently be filed with the OAL Clerk and the assigned ALJ, if known, **at the same time the motion is filed with the Commissioner.**

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

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.

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

(a) (No change.)

(b) Prior to transmittal to the OAL, parties to a contested matter may notify the Commissioner of settlement at any time.

1. [Where] **If** settlement occurs prior to the filing of an answer, the matter shall be deemed withdrawn pursuant to (a) above.

2. [Where] **If** settlement occurs subsequent to the filing of an answer, the parties shall set forth the full settlement terms for review and approval by the Commissioner.

(c)–(f) (No change.)

#### 6A:3-1.14 Written decision

(a) [Every determination of a controversy or dispute arising under the school law, except charges against a district board of education employee, an employee of a State agency, or employees of charter schools who are accorded tenure under the school law, shall be made by the Commissioner. Every such determination shall be embodied in a written decision, which] **Final decisions of the Commissioner in matters transmitted to the OAL shall be, in writing, and** shall set forth findings of fact, conclusions of law, and an appropriate order pursuant to applicable rules of the OAL.

(b) (No change.)

[(c) A Commissioner’s decision shall be deemed filed three days after the date of mailing to the parties.]

#### 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 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 court, but within 45 days of the filing of the Commissioner’s decision.

1. A motion shall be filed with the Commissioner together with proof of service on each other party, accompanied by a copy of the notice of appeal and a letter memorandum or brief [which] **that** addresses 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). The motion may be further briefed in accordance with the directives of the Commissioner, and shall be decided by the Commissioner based upon the above-referenced criteria.

(b)–(d) (No change.)

#### 6A:3-1.16 Relaxing of rules

The rules in this chapter shall be considered general rules of practice to govern, expedite, and effectuate the procedure before, and the actions of the Commissioner in connection with, the determination of controversies and disputes [under] **pursuant to the** school laws. [Where] **The Commissioner may relax or dispense** such rules **that** do not reflect a specific statutory requirement or an underlying rule of the OAL[, they may be relaxed or dispensed with by the Commissioner, in the Commissioner’s discretion,] in any case where a strict adherence thereto may be deemed inappropriate or unnecessary or may result in injustice.

#### 6A:3-1.17 Awarding of interest

(a) The Commissioner may **award**, pursuant to the criteria of this section, [award] prejudgment and/or postjudgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

1. (No change.)

2. Any party seeking postjudgment interest shall file a new petition in accordance with N.J.A.C. 6A:3-1.3, addressing the criteria set forth [in] **at** (c)2 below and proposing an interest calculation consistent with (d) below.

(b) “Interest” is defined as follows:

1. [Pre-judgment] **Prejudgment** interest is interest awarded for that period of time prior to the adjudication of the monetary claim.

2. [Post-judgment] **Postjudgment** interest is interest determined by the Commissioner to be due to a petitioning party for that period of time after the claim has been successfully adjudicated but remains unsatisfied.

(c) The following criteria shall be applied when awarding interest:

1. The Commissioner shall award prejudgment interest when [he or she] **the**

**Commissioner** has concluded that the denial of the monetary claim was an action taken in bad faith and/or has been determined to have been taken in deliberate violation of statute or rule.

2. The Commissioner shall award postjudgment interest when a respondent has been determined through adjudication to be responsible for such payment, the precise amount of such claim has been established or could have been established, and the party responsible for the payment of the judgment has neither applied for nor obtained a stay of the decision but has failed to satisfy the claim within 60 days of its award.

(d) (No change.)

## Subchapter 2. Declaratory Rulings

### 6A:3-2.1 Petition for declaratory ruling

(a) Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the Commissioner for a declaratory ruling with respect to rights, responsibilities, and status arising from any statute or rule within the jurisdiction of the Commissioner. The determination to entertain such petitions for declaratory ruling shall be within the sole discretion of the Commissioner. If such request is granted, the matter shall proceed in accordance with this chapter as they pertain to petitions. A declaratory ruling shall be binding upon the Commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

1. A request for a declaratory ruling shall reflect adverse positions on the statute or rule in question by the parties in interest, may not seek consequential relief beyond a declaration as to the meaning of the statute or rule, and may not be based on underlying facts that are future, contingent, uncertain, or disputed.

(b) Except that the format of the petition shall be as set forth in this subchapter, the rules pertaining to filing, service, and answer of petitions as set forth in this chapter shall apply to petitions for declaratory ruling.

6A:3-2.2 Format of petition for declaratory ruling

(a) The format of the petition for declaratory ruling follows:

: BEFORE THE COMMISSIONER OF

: EDUCATION OF NEW JERSEY

CAPTION :

: PETITION FOR DECLARATORY

: RULING

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, whose telephone number is \_\_\_\_\_[, fax number is \_\_\_\_\_] and email address is \_\_\_\_\_, hereby requests the Commissioner to render a declaratory ruling concerning the application of (N.J.S.A. 18A: \_\_\_\_, [N.J.A.C. 6: \_\_\_\_,] N.J.A.C. 6A: \_\_\_\_\_) to the controversy which has arisen between petitioner and respondent who resides at \_\_\_\_\_ by reason of:

1. (Here set forth in as many itemized paragraphs as are necessary the specific allegations, and the facts supporting them, [which] **that** constitute the basis of the controversy.)

WHEREFORE, petitioner respectfully prays that the Commissioner shall construe the provisions of \_\_\_\_\_ and determine and declare \_\_\_\_\_

Signature of petitioner or representative

Date: \_\_\_\_\_

(Name of petitioner), of full age, being duly sworn upon [his or her] **an** 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)]

### 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 that, if true, would entitle the Commissioner to impose a sanction on the Commissioner's own initiative, the Commissioner may accord the district board of education, or any other party subject to the Commissioner's jurisdiction, an opportunity to present its views preliminary to imposing such sanction by issuing an order directing such district board of education or party to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be deemed to be in lieu of a contested case hearing, and the right to a contested case hearing is independent of, and in addition to, this step. An order to show cause shall be appropriate in the following circumstances, although it is not to be deemed limited thereto:

1.-6. (No change.)

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] **Actions that** 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] **at**

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*, 90 N.J. 126 (1982) as set forth at N.J.A.C. 6A:3-1.6(b).

2. (No change.)

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

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

(a) [Where] **If** a district board of education acts to withhold a teaching staff member's salary increment based upon teaching performance pursuant to N.J.S.A. 18A:29-14, the teaching staff member may file a petition of appeal according to the procedures set forth in this chapter.

1. Disputes involving the withholding of a teaching staff member's salary increment for predominately disciplinary reasons shall be subject to the grievance procedures established by law in accordance with N.J.S.A. 34:13A-26. Pursuant to N.J.S.A. 34:13A-27, if there is a dispute as to the nature of a withholding, the Public Employment Relations Commission shall determine whether the basis for the withholding is predominately disciplinary or predominantly for reasons of teaching performance[; where]. **If** 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] **Pursuant To** Tenure Employees' Hearing Act

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

(a) (No change.)

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

1.-2. (No change.)

3. The affected tenured employee shall have an opportunity to submit to the district

board of education or the State district superintendent a written statement of position and a written statement of evidence, both of which shall be executed under oath with respect thereto within 15 days of receipt of the tenure charges.

4. (No change.)

5. The district board of education or the State district superintendent shall provide, within three working days **of the determination pursuant to (b)4 above**, written notification of the determination to the employee against whom the charge has been made, in person, or by certified mail to the last known address of the employee and the employee's representative, if known.

6. If the district board of education or the State district superintendent finds probable cause exists and the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the district board of education or the State district superintendent shall file, within 15 days **of the determination pursuant to (b)4 above**, written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the statement of evidence and the required certificate of determination, together with the name of the attorney who it is anticipated for administrative purposes will be representing the district board of education or State district superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.

7. (No change.)

(c) If the tenure charges are charges of inefficiency pursuant to N.J.S.A. 18A:6-17.3, except in the case of building principals and vice principals in school districts under full State intervention, where procedures are governed by the provisions [of] **at** 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. When the conditions [described in] **set forth at** N.J.S.A. 18A:6-17.3.a(1) or (2)

have been satisfied, the superintendent shall promptly file with the secretary of the district board of education a charge(s) of inefficiency.

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

3. (No change.)

4. Within 30 days of the filing **pursuant to (c)1 above**, the district board of education or State district superintendent shall forward a written charge and the statement of evidence to the Commissioner, unless the district board of education or superintendent determines the evaluation process has not been followed. Such determination shall be made by a majority vote of the district board of education's full membership or by the State district superintendent.

5. Upon receipt of the charge, the Commissioner or [his or her] **the Commissioner's** designee shall examine the charge. The charge shall again be served upon the employee at the same time it is forwarded to the Commissioner and proof of service shall be included with the filed charges. The individual against whom the charge is filed shall have 10 days to submit to the Commissioner a written response to the charge.

6. Within five days of the individual's deadline to submit a written response to the charge, the Commissioner shall appoint an arbitrator to hear the case and refer the case to the arbitrator, unless [he or she] **the Commissioner** determines the evaluation process has not been followed.

7. (No change.)

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions [of] **at** N.J.A.C. 6A:11-6.

#### 6A:3-5.2 Format of certificate of determination

(a) The certificate of determination that accompanies the written charges shall contain a certification

by the district board of education secretary or the State district superintendent **of the following**:

1. (No change.)

2. [Of the] **The** date, place, and time of the meeting at which such determination was made and whether the employee was suspended and, if so, whether such suspension was with or without pay; and

3. (No change.)

(b) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions [of] **at** N.J.A.C. 6A:11-6.

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

(a) Except as specified [in] **at** N.J.A.C. 6A:3-5.1(c)5, 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] **at** N.J.A.C. 6A:3-1.5(a) through (d).

1. (No change.)

(b) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions [of] **at** N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, or the 10-day answer period specified [in] **at** N.J.A.C. 6A:3-5.1(c), and a copy shall be served upon the charging district board of education or the State district superintendent. The district board of education or State district superintendent shall promptly notify the Commissioner of any opposition to the request.

1. A request for extension that is received after the 15-day period allotted for answer to tenure charges, or after the 10-day period allotted [in] **at** N.J.A.C. 6A:3-5.1(c), will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.

(c) If no answer is filed within the requisite time period and no request for extension is made, [or] if the request is denied by the Commissioner, or **if** the charged employee submits an answer or other responsive filing indicating that the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.

(d) The provisions of this section shall not apply to employees of charter schools, who are governed by the provisions [of] **at** N.J.A.C. 6A:11-6.

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

(a) 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, shall comport with the process [as described in] **at** 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 the Office of [Cooperative Labor] **Employee** Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections, or the **Director of the Office of Education in 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 the individuals in the respective department[s] in the manner and time frame prescribed [by] **at** N.J.A.C. 6A:3-5.1(b).

1. In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions [of] **at** N.J.S.A. 18A:6-10 if the negotiated agreement between an agency and the majority representative of the employees in the appropriate collective bargaining unit provides for such

discipline. In these cases, tenure charges shall not be filed to impose minor discipline on a person serving under tenure pursuant to N.J.S.A. 18A:60-1.

(b) [The] **Within 45 days of receipt of respondent's written statement of evidence under oath or upon expiration of the allotted 15-day time period, the** Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education, 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] **at** N.J.A.C. 6A:3-5.1(b).

(c) (No change.)

(d) The certificate of determination that accompanies the written charges shall contain a certification by the Director of the Office of Cooperative Labor Relations in the Department of Human Services or the Department of Children and Families, the Director of the Office of Educational Services in the Department of Corrections or the Juvenile Justice Commission, or the individual designated by the Commissioner of Education **of the following:**

1. (No change.)

2. [Of the] **The** date on which such determination was made and whether the employee was suspended and, if so, whether such suspension was with or without pay.

(e) 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 with the Commissioner consistent with the provisions [of] **at** N.J.A.C. 6A:3-5.3(a).

(f) Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions [of] **at** N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the 15-day answer period, and a copy shall be served upon the charging department, which shall promptly notify the Commissioner of its opposition, if any, to the request.

1. (No change.)

(g) (No change.)

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

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

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

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

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

(a) Once tenure charges are certified to the Commissioner, they may be withdrawn or

settled only with approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the arbitrator, shall address the following standards established by the State Board of Education in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions (S.L.D.)* 842, 846):

1.–3. (No change.)

4. Indication the charged party entered into the agreement with a full understanding of [his or her] **the charged party's** rights;

5.–6. (No change.)

(b)–(c) (No change.)

(d) If tenure proceedings against a teaching staff member are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth [in] **at** N.J.A.C. 6A:9B-4.3(a).

(e) (No change.)

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

Arbitrators' expenses shall be submitted, invoiced, and paid in accordance with the [March 1, 2016] **September 6, 2019**, New Jersey Department of the Treasury, Office of Management and Budget Circular, incorporated herein by reference, as amended and supplemented, setting forth the State's rules regarding travel.

#### Subchapter 6. Termination or Alteration of Sending-Receiving Relationship

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

(a) (No change.)

(b) Where an application for change is unanswered within the requisite filing period, or is answered by a filing(s) [or filings] indicating that each respondent does not oppose the

application, the Commissioner shall so notify the petitioning district board of education and each respondent district board of education. At the next public meeting of each district board of education following notice from the Commissioner, each district board of education shall announce that the record before the Commissioner shall remain open for a period of 20 days from the date of the announcement in order that interested persons or entities may submit written comments to the Commissioner. Such announcement shall indicate the manner in which, and the address to which, comments may be submitted to the Commissioner as set forth [in] **at** N.J.A.C. 6A:3-1.2 and 1.3, and shall further indicate the nature and purpose of such comments as set forth [in] **at** (c) below.

1. Each district board of education shall **submit to the Commissioner**, within 10 days of the date of the announcement, [submit to the Commissioner] a certification indicating the date the announcement was made and the content of the announcement.

(c) Comments submitted pursuant to (b) above shall not exceed 10 pages in length, shall be served on all parties to the case, shall include proof of such service when filed with the Commissioner, and shall specifically address the following statutory standard for the Commissioner's review of applications for change in designation, allocation, or apportionment:

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

(d) Each party to the application for change shall have 20 days [to reply to any comments] at the close of the designated comment period **to reply to any comments**. Any reply shall be served on all other parties to the application.

(e)–(f) (No change.)

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

6A:3-7.1 Filing and service of petition

(a) To initiate an appeal of a decision of the New Jersey State Interscholastic Athletic Association (NJSIAA) before the Commissioner, a petitioner shall prepare and serve a verified petition in the same form and manner as prescribed by this chapter, except as set forth below.

1.-2. (No change.)

3. The petitioner shall include a certification stating that the petitioner has exhausted the internal appeal procedures of the NJSIAA set forth in the NJSIAA constitution, bylaws, and rules and regulations as adopted by member schools pursuant to N.J.S.A. 18A:11-3, and that the decision appealed from is a final determination of the NJSIAA.

(b) The Commissioner shall summarily dismiss any petition filed prior to exhaustion of internal NJSIAA appeal procedures.

1. Where a petition challenges a rule of the NJSIAA or a determination of the NJSIAA that has not been reached through a quasi-judicial process including evidentiary hearing, and where the NJSIAA constitution, bylaws, and rules and regulations adopted pursuant to N.J.S.A. 18A:11-3 do not provide for an applicable internal hearing process, the Commissioner shall decline to hear the matter on appeal until a hearing before the NJSIAA has been conducted in accordance with procedures agreed upon by the NJSIAA and the petitioner.

(c) The Commissioner shall summarily dismiss any petition seeking to appeal a determination of the NJSIAA in an area that is expressly designated as not appealable by the NJSIAA constitution, bylaws, or rules and regulations as adopted by member schools pursuant to law.

(d) (No change.)

6A:3-7.2 Answer; record on appeal

(a) Within 10 days of its receipt of a verified petition, the NJSIAA and any other respondent shall

file an answer to the petition in the same form and manner as prescribed [by] **at** N.J.A.C. 6A:3-1.5.

(b) (No change.)

#### 6A:3-7.3 Schedule of briefing

(a)–(c) (No change.)

(d) Nothing in this section shall preclude the Commissioner from adjusting the requirements [of] **at** (a) and (b) above when the Commissioner’s ability to render a timely decision would not be compromised by granting a party’s request for additional time within which to make required submissions.

#### 6A:3-7.4 Applications for emergent relief

(a) Where a petitioner is seeking emergent relief, a petition shall be filed in accordance with N.J.A.C. 6A:3-7.1, except as set forth below, and shall be accompanied by a separate motion and brief meeting the requirements [of] **at** N.J.A.C. 6A:3-1.6.

1. (No change.)

2. Where the relief sought in the petition will become moot upon the Commissioner’s decision on the motion for emergent relief, **the** petitioner’s brief shall additionally address the merits of the petition so that the Commissioner’s decision on the emergent application shall resolve the entire controversy without further proceedings.

(b) Within three days of its receipt of a verified petition with motion for emergent relief, or within such shorter period as may be directed by the Commissioner due to a matter’s extreme urgency, the NJSIAA and any other respondent shall file an answer to the petition in the same form and manner as prescribed [by] **at** N.J.A.C. 6A:3-1.5, together with a brief in opposition to petitioner’s submission pursuant to (a) above and proof of service upon the petitioner(s).

(c) (No change.)

#### 6A:3-7.5 Standard of review

(a) In determining appeals from NJSIAA decisions, the Commissioner's scope of review shall be appellate in nature.

1. If the NJSIAA has granted a petitioner due process and its decision is supported by sufficient credible evidence in the record as a whole, the Commissioner shall not substitute [his or her] **their** judgment for that of the NJSIAA, even if the Commissioner might judge otherwise in a [de novo] *de novo* review.

2. (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] **at** N.J.A.C. 6A:3-1, except as set forth below.

1. Petitions in letter form shall be accepted from [pro se] *pro se* petitioners, provided that such petitioners use the form provided by the Department or prepare a letter wherein they:

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

ii.–iv. (No change.)

2. Petitions from [pro se] *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 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. Nothing [in] **at** (a)2 above shall preclude a [pro se] *pro se* petitioner from serving a petition on a respondent district board of education in accordance with N.J.A.C. 6A:3-1.3. In such cases, the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioner's child(ren) pending the outcome of the appeal, shall commence on receipt of the petition, rather than on any subsequent notice from the Office.

ii. Petitions filed by represented petitioners shall conform to the requirements [of] **at** N.J.A.C. 6A:3-1.3, including proof of service on the district board of education. [Such] **The Office will not transmit such** petitions [will not be transmitted] to the district board or executive county superintendent [by the Office of Controversies and Disputes] as set forth in this section; however, upon receipt of any such petition, the Office will transmit [by facsimile] the notice of the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioners' child(ren) pending the outcome of the appeal.

3.-4. (No change.)

(b) [Where appeal] **An appeal that** is taken from a determination of ineligibility [under] **pursuant to** N.J.S.A. 18A:38-1.b(1) ("affidavit" students)[, such appeal] shall be filed by the resident making the claim of entitlement and shall not be filed by the parent or legal guardian.

(c) Hearing of appeals filed pursuant to this subchapter shall be on an expedited basis in accordance with the provisions [of] **at** N.J.S.A. 18A:38-1.

(d) [Where] **If** a petition is abandoned through withdrawal, failure to prosecute, or any means other than settlement agreeing to waive or reduce tuition and the Commissioner determines that the child(ren) are ineligible for a free education in the school district, and [where] the record includes a

calculation reflecting the rate(s) of tuition for the year(s) at issue, the per diem rate of tuition for the current year, and the date on which the student's ineligible attendance began, payment of tuition, consistent with the provisions [of] **at** N.J.A.C. 6A:22-6, may be ordered by the Commissioner in the decision finding abandonment of the appeal. [Where] **If** the record does not include such a calculation, but the district board of education has filed a counterclaim for tuition along with its answer to the petition, the counterclaim shall proceed to hearing at the OAL notwithstanding that the petition has been withdrawn or abandoned.

(e) Nothing in this subchapter shall preclude a district board of education from seeking payment of tuition, consistent with the provisions [of] **at** N.J.A.C. 6A:22-6.1(a), for a student it determines to be ineligible to attend school in the school district.

(f) (No change.)

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

#### Subchapter 9. Review of Penalty Recommendations of The School Ethics Commission

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

(a) By operation of N.J.S.A. 18A:12-29.c, the Commissioner shall review penalty recommendations of the School Ethics Commission (**Commission**). Such review shall be limited to the appropriateness of the penalty recommended by the Commission in light of its findings of fact and determinations of violation.

(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] **at** 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 10. Applications for Issuance of Facilities Bonds

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

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

#### Subchapter 12. Hearings Prior to Suspension or Revocation of School Bus Driver Endorsement

Pursuant to N.J.S.A. 18a:39-26 et seq.

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

(a) [Where] **If** a school bus driver has been notified by the Department's [Criminal History Review Unit] **Office of Student Protection** 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:39-26 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] **at** N.J.A.C. 6A:3-1.

1. (No change.)

2. In addition to the service requirements [of] **at** 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] **Office of Student Protection**, New Jersey Department of Education, PO Box 500, Trenton, New Jersey 08625-0500.

(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] **Office of Student Protection** will:

1.-2. (No change.)