

Notice of Proposal for N.J.A.C. 6A:4, Appeals

The following is the accessible version of the notice of proposal for N.J.A.C. 6A:4. The notice of proposal document includes two sections – [summary](#) and [proposed amendments](#).

Education

Commissioner of Education

Appeals

Proposed Readoption with Amendments: N.J.A.C. 6A:4

Authorized By: Angelica Allen-McMillan, Ed.D., Acting Commissioner, Department of Education.

Authority: P.L. 2008, c. 36.

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

Proposal Number: PRN 2023-065.

Submit written comments by September 15, 2023, to:

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The agency proposal follows:

Summary

The Department of Education (Department) proposes to readopt with amendments N.J.A.C. 6A:4, Appeals. In accordance with N.J.S.A. 52:14B-5.1, the chapter was scheduled to expire on November 22, 2023. As the agency submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to May 20, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The rules proposed for readoption with amendments implement the administrative appeal processes established at P.L. 2008, c. 36. The law eliminated the role of the State Board of Education in the hearing of administrative appeals and instead requires the following: 1. Commissioner of the Department (Commissioner) determinations, including decisions in contested cases, are final agency actions appealable to the Appellate Division of the Superior Court; 2. State Board of Examiners' decisions suspending or revoking teaching certificates, School Ethics Commission decisions finding violation of the School Ethics Act, and interlocutory decisions of the State Board of Examiners or the School Ethics Commission are appealable to the Commissioner, whose decision on appeal will constitute final agency action; and 3. requests for relief arising out of previously issued State Board of Education decisions are to be made to the Commissioner.

N.J.A.C. 6A:4 was adopted as special new rules effective July 8, 2008, and readopted in 2009 and 2016.

The rules proposed for readoption with amendments establish standards and procedures for the filing, briefing, and adjudication of the previously mentioned appeals, including settlements, withdrawals, and motions for stay, emergent relief, clarification, reconsideration, and leave to participate as *amicus curiae* or appeal from interlocutory actions and orders. The procedures set forth in the rules proposed for readoption with amendments remain substantially similar to the previous rules governing appeals to the State Board of Education and to the Commissioner — which have been used successfully for many years, are well known to litigants, and have been regularly reviewed and revised over time to address issues of clarity and efficiency and incorporate new developments in statutory, regulatory, and decisional law.

Rules of procedure for the hearing of appeals are critical to effectuating the Legislature's intent with respect to the administrative adjudication of education matters other than contested cases before the Commissioner, which continue to be governed at N.J.A.C. 6A:3, Controversies and Disputes. By carefully delineating the appeals process and by setting reasonable timelines for litigants, the rules proposed for readoption with amendments are intended to provide a uniform, orderly, and fair process for the administrative determination of appeals in school law disputes and to provide all parties with clear notice of the process.

Unless otherwise noted in this Summary, all proposed amendments are to eliminate gender-specific pronouns, correct cross-references to the New Jersey Administrative Code, or for clarity or stylistic or grammatical improvement.

Subchapter 1. General Provisions

N.J.A.C. 6A:4-1.1 Purpose and Scope

This section sets forth the chapter's purpose and scope, which is to implement the provisions at P.L. 2008, c. 36, regarding appeals of determinations of the Commissioner, State Board of Examiners, and School Ethics Commission. The chapter also establishes standards and procedures for the filing, briefing, and adjudication of appeals.

N.J.A.C. 6A:4-1.2 Definitions

This section defines terms used throughout the chapter.

The Department proposes an amendment to the definition of "filing" to delete the option to file by facsimile, as email filing is free and more accessible for pro se appellants than facsimile.

N.J.A.C. 6A:4-1.3 Appeal of Decisions

This section states Commissioner decisions are considered final agency decisions appealable to the Appellate Division of the Superior Court. The rules also specify which State

Board of Examiners and School Ethics Commission decisions are appealable to the Commissioner. This section is proposed for amendment to correct two cross-references.

Subchapter 2. Procedures for Appeal

N.J.A.C. 6A:4-2.1 Who May Appeal

This section specifies that a party aggrieved by a State Board of Examiners decision suspending or revoking a certificate, or by a School Ethics Commission decision finding a violation of the School Ethics Act, can appeal to the Commissioner through the established processes. The rules also allow parties jointly interested in a decision or action to appeal jointly or separately. It also allows a respondent to cross appeal. This section is proposed for amendment to correct a cross-reference and to correct style and usage.

N.J.A.C. 6A:4-2.2 Time for Appeal

This section prescribes a 30-day period for appealing to the Commissioner of a State Board of Examiners or School Ethics Commission decision. The rules also allow the filing of a cross appeal within 10 days of service of a notice of appeal and references the applicable rules for time periods for appeals from interlocutory orders, decisions, or actions, or for cross appeal if leave to appeal is granted. This section is proposed for amendment to correct a cross-reference and for style and usage.

N.J.A.C. 6A:4-2.3 Computation of Time

This section specifies the method for computing time periods referenced in the chapter and how a decision or filing is deemed filed.

The Department proposes to delete N.J.A.C. 6A:4-2.3(c), which provides that filings received after 4:15 P.M. shall be deemed filed on the next business day. The increase in popularity of email filing 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 appellants. The elimination of the provision will allow the date of submission to always be the same as the date of filing to avoid such confusion.

N.J.A.C. 6A:4-2.4 Notice of Appeal

This section specifies the contents of notices of appeal or cross appeal, and the filing and proof of service requirements for appeals to the Commissioner, pursuant to the chapter.

The Department proposes an amendment at N.J.A.C. 6A:4-2.4(a) to add an email filing option for appeals and cross-appeals. The Department has been accepting email filings for appeals and cross-appeals during the COVID-19 pandemic without issue. The proposed amendments will codify the option and correct for style and usage.

The Department proposes an amendment at N.J.A.C. 6A:4-2.4(b)2 to delete the requirement that an affidavit of service be sworn or affirmed in the presence of a notary public or other person authorized to administer an oath and affirmation. The proposed amendment will make filing easier and less expensive for members of the public, particularly pro se appellants.

N.J.A.C. 6A:4-2.5 Record on Appeal

This section specifies the required contents of the record on appeal, how and when a record is certified and remitted to the Commissioner, and the process for settling or supplementing a record. This section is proposed for amendment to replace the pronoun choices with “the Commissioner.”

N.J.A.C. 6A:4-2.6 Filing and Service of Briefs, Motions, and Applications

This section specifies the requirements for filing and service of briefs, motions, and applications. The rules also state that appeals filed pursuant to the chapter will be considered without oral argument.

N.J.A.C. 6A:4-2.7 Time for Filing and Service of Briefs

This section prescribes the timelines for filing and service of briefs. The rules also provide notice to appellants and cross appellants that failure to file an appeal brief or brief in support of a cross appeal could be viewed as a failure to perfect the appeal or cross appeal, and could result in dismissal of the appeal or cross appeal. The section further allows the Commissioner to consider a matter on the record before the Commissioner if a respondent fails to meet the filing deadline for an answer brief. This section is proposed for amendment to replace pronoun choices with the “Commissioner.”

N.J.A.C. 6A:4-2.8 Contents of Briefs

This section includes the required content of the cover of each formal brief filed pursuant to the chapter and stipulates the required format for various briefs. The rules also require all briefs to strictly preserve the anonymity of any minor who is a party to or witness in the matter by means, such as using initials in place of the minor’s name.

N.J.A.C. 6A:4-2.9 Length of Briefs

This section establishes a 40-page limit, exclusive of tables of contents and appendices, for formal briefs and a 15-page limit for letter briefs and reply briefs. The rules allow page limits to be relaxed only by leave of the Commissioner.

N.J.A.C. 6A:4-2.10 Appendices

This section establishes requirements for appendices to briefs to ensure that the documentation that is material to a case’s resolution will be submitted with the briefs.

N.J.A.C. 6A:4-2.11 Extensions of Time for Briefs

The section states that extensions for the filing of briefs will be granted upon request with the consent of all parties, and will be granted only by leave of the Commissioner without consent of all parties.

Subchapter 3. Motions

N.J.A.C. 6A:4-3.1 General Provisions

This section defines the required contents and format of motions and supporting briefs and the required time period for filing of papers in opposition. The rules also require a copy of the moving papers to be served on all other parties and the original filed with the Commissioner. The section further allows the Commissioner to consider the motion unopposed if no opposing brief is filed. This section is proposed for amendment to correct style and usage.

N.J.A.C. 6A:4-3.2 Motion to Participate as *Amicus Curiae*

This section sets forth the process and format for filing motions to participate as *amicus curiae* with the Commissioner and the conditions under which the Commissioner can grant motions.

N.J.A.C. 6A:4-3.3 Motion for Stay of a Decision of the State Board of Examiners

This section sets forth the process for filing a motion for a stay of a State Board of Examiners' determination.

N.J.A.C. 6A:4-3.4 Motion for Leave to Appeal an Interlocutory Order, Decision, or Action

This section sets forth the process for filing with the Commissioner motions for leave to appeal interlocutory orders, decisions, or actions of the State Board of Examiners or School Ethics Commission.

N.J.A.C. 6A:4-3.5 Emergency Relief in Matters on Appeal

This section sets forth the manner in which a party can move for emergency relief before the Commissioner regarding appeals governed by this chapter. The rules also reference the standard by which the motions will be reviewed.

N.J.A.C. 6A:4-3.6 Motions for Clarification and/or Reconsideration of a Decision of the Commissioner on Appeal

This section sets forth the manner in which parties can request clarification and/or reconsideration of Commissioner decisions on appeal. The rules also establish the basis on which motions for reconsideration will be entertained. The section further stipulates the filing of a motion for clarification or reconsideration will not relieve the parties from compliance with the Commissioner's judgment or order.

Subchapter 4. Review and Decision

N.J.A.C. 6A:4-4.1 Standard of Review

This section establishes the standard of review for appeals made pursuant to this chapter. The section states the Commissioner will not disturb a State Board of Examiners' or School Ethics Commission's decision unless the appellant has demonstrated that the State Board of Examiners or the School Ethics Commission acted in a manner that was arbitrary, capricious, or contrary to law. The section further sets forth the standard of review for applications seeking emergency relief or stay of a decision.

N.J.A.C. 6A:4-4.2 Settlement and Withdrawal

This section sets forth the requirements for withdrawal or settlement of an appeal. The section allows an appellant to withdraw an appeal at any time prior to issuance of the Commissioner's decision, which leads to the Commissioner discontinuing all proceedings and notifying all parties, accordingly. The section also specifies an appeal can be settled at any time prior to the Commissioner's decision if the parties notify the Commissioner of the proposed settlement, which is subject to the Commissioner's review and approval. The section further states a proposed settlement must reflect a district board of education's consent, if the district board of education is a party, and cannot include terms that restrict access to public records or information or that require disclosure of protected information.

N.J.A.C. 6A:4-4.3 Commissioner's Decision

This section states the Commissioner's determinations rendered pursuant to the chapter will be embodied in a written decision, which is deemed a final agency action appealable to the Appellate Division of the Superior Court. The section also requires the Commissioner's decision to be mailed to all parties or their representatives of record.

The Department proposes to delete the portion of N.J.A.C. 6A:4-4.3(b) that provides that the Commissioner's decision is deemed filed three days after the date of mailing, as decisions are now emailed.

N.J.A.C. 6A:4-4.4 Relaxation of Rules

This section states the chapter's rules are to be construed to secure a just determination, simplicity of procedure, fairness in administration, and elimination of unnecessary delay. The section allows the Commissioner to relax any rule in the chapter that does not reflect a statutory requirement or applicable rule of administrative procedure, if strict adherence to the rule is deemed inappropriate or unnecessary or would result in injustice. The section also requires briefing on appeals and motions to be in accordance with the chapter. The rules further allow the Commissioner to modify time schedules or direct additional submissions if the Commissioner deems it necessary to expedite proceedings or protect the interests of the parties. This section is proposed for amendment to correct for style and usage.

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

Social Impact

The primary impact of the rules proposed for readoption with amendments is to ensure consistency, fairness, and due process in appeal proceedings before the Commissioner, to the

benefit of all members of the education community and the general public. The rules are intended to make the process for appealing State Board of Examiners and School Ethics Commission decisions as well-defined, accessible, and as easy to use as possible, and consistent with applicable law.

Economic Impact

The rules proposed for readoption with amendments will impose no economic burden on parties to appeals other than costs associated with the preparation of required papers and representation by legal counsel if a party elects, or is required, to be represented. There are no filing fees, nor is the Commissioner authorized to award attorney fees or damages.

Federal Standards Statement

The rules proposed for readoption with amendments will not be inconsistent with, or exceed, Federal requirements or standards as there are no Federal requirements or standards related to the chapter.

Jobs Impact

The rules proposed for readoption with amendments will result in neither the generation nor the loss of jobs in New Jersey.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

The rules proposed for readoption with amendments do not impose reporting, recordkeeping, or compliance requirements upon small businesses, as defined pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Individuals, the State Board of

Examiners, and the School Ethics Commission are the only parties to appeals that proceed in accordance with the rules proposed for readoption with amendments.

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 that 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 establish standards and procedures for the filing, briefing, and adjudication of appeals to the Commissioner regarding specified State Board of Examiners and School Ethics Commission decisions.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments will have an insignificant impact on smart growth. 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 establish standards and procedures for the filing, briefing, and adjudication of appeals to the Commissioner from specified State Board of Examiners and School Ethics Commission decisions.

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 establish standards and procedures for the filing, briefing, and adjudication of appeals to the

Commissioner from specified State Board of Examiners and School Ethics Commission decisions. 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:4.

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

Subchapter 1. General Provisions

6A:4-1.2 Definitions

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

...

“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.

...

“Pro se” means a person who acts on [his or her] **their** own behalf without an attorney or other nonlawyer representative as permitted [by] **at** N.J.A.C. 1:1, Uniform Administrative Procedure Rules.

...

6A:4-1.3 Appeal of decisions

(a) - (b) (No change.)

(c) Appeals of School Ethics Commission decisions finding that a school official has violated the School Ethics Act (Act), including the Code of Ethics for School Board Members, shall be

made to the Commissioner in accordance with this chapter. If the official found to have violated the Act is an officer or employee of the New Jersey School Boards Association, the School Ethics Commission decision as to both violation and sanction shall be deemed final agency action appealable to the Appellate Division of the Superior Court.

1. School Ethics Commission decisions finding that probable cause does not exist to credit the allegations in a complaint, or dismissing a complaint, shall be deemed final agency actions appealable to the Appellate Division of the Superior Court pursuant to N.J.S.A. 18A:12-29.b and N.J.A.C. 6A:28-[11.1]**10.1**.

2. (No change.)

3. If the School Ethics Commission's underlying finding of violation is not appealed, a sanction recommended by the School Ethics Commission for a school official other than an officer or employee of the New Jersey School Boards Association shall be reviewed by the Commissioner in accordance with N.J.A.C. 6A:28-[10.12]**9.11** and 6A:3-9.1.

(d)–(e) (No change.)

Subchapter 2. Procedures for Appeal

6A:4-2.1 Who may appeal

(a) Any party aggrieved by a State Board of Examiners decision suspending or revoking a certificate, or by a School Ethics Commission decision finding a violation of the School Ethics Act, may appeal to the Commissioner in accordance with this chapter.

1. (No change.)

2. Any party taking exception to the recommended sanction of the School Ethics Commission but not disputing the School Ethics Commission's finding of violation shall proceed in accordance with N.J.A.C. 6A:28-[10.12]**9.11** and 6A:3-9.1.

(b) (No change.)

(c) A respondent may cross appeal as provided [by] **at** N.J.A.C. 6A:4-2.2(c).

6A:4-2.2 Time for appeal

(a) (No change.)

(b) Appeals of final School Ethics Commission decisions finding a violation of the School Ethics Act shall be filed within 30 days of the filing date of the decision being appealed.

1. If a School Ethics Commission's finding of violation is appealed, the Commissioner's review of the School Ethics Commission's recommended sanction pursuant to N.J.S.A. 18A:12-29.c will be deferred and incorporated into the Commissioner's review on appeal.

i. If a notice of appeal has been filed, pursuant to N.J.A.C. 6A:4-2.4, on or before the due date for exceptions to the School Ethics Commission's recommended sanction pursuant to N.J.A.C. 6A:28-[10.12(b)]**9.11(b)** (13 days from the date the School Ethics Commission's decision is forwarded to the Commissioner), exceptions need not be filed by that date but may be incorporated into the appellant's briefs on appeal.

ii. If a notice of appeal has not been filed, pursuant to N.J.A.C. 6A:4-2.4, on or before the due date for exceptions to the School Ethics Commission's recommended sanction pursuant to N.J.A.C. 6A:28-[10.12(b)]**9.11(b)** (13 days from the date the School Ethics Commission's decision is forwarded to the Commissioner), exceptions shall be filed by that date to be considered by the Commissioner [in his or her] **during the** review of the sanction, pursuant to (b)1 above.

(c) (No change.)

(d) Applications for leave to appeal from interlocutory orders, decisions, or actions, or for cross appeal if leave to appeal is granted, shall be made within the time provided [by] **at** N.J.A.C. 6A:4-3.4.

6A:4-2.3 Computation of time

(a) - (b) (No change.)

[(c) Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.]

6A:4-2.4 Notice of appeal

(a) An appeal or cross appeal shall be made by serving a copy of the notice of appeal or cross appeal upon all other parties, providing a copy to the State Board of Examiners or School Ethics Commission, as [the case may be] **appropriate**, and [filing the original with] **emailing the appeal to the email address designated by the Office of Controversies and Disputes or mailing the appeal to** the Commissioner c/o the Director, Office of Controversies and Disputes, New Jersey State Department of Education, 100 River View Plaza, P.O. Box 500, Trenton, New Jersey 08625-0500, Attention: Appeals.

1. A notice of appeal or notice of cross appeal shall set forth the name of the party taking the appeal and [his or her] **the party's** address or that of [his or her] **the party's** representative, if represented, and the names of all other parties. A notice of appeal or notice of cross appeal also shall specifically designate the decision appealed from, or such part as appealed from.

2. - 3. (No change.)

4. Each notice of appeal shall include an appended proof of service on all other parties. The notice of appeal also shall indicate a copy of the notice has been provided to the State Board of Examiners or the School Ethics Commission, as [the case may be] **appropriate**.

(b) Proof of service shall be in one of the following forms:

1. An acknowledgement of service indicating the date of service and the address at which each party was served and signed by the representative or the representative's designee for each party, or signed and acknowledged by the party [himself or herself];

2. An affidavit of the person making service [that is sworn or affirmed to be true in the presence of a notary public or other person authorized to administer an oath or affirmation and] that indicates the date of service and the address at which each party was served;

3. - 4. (No change.)

(c) (No change.)

6A:4-2.5 Record on appeal

(a) (No change.)

(b) A party who questions whether the record fully and truly discloses what occurred in the proceedings below shall apply on motion to the State Board of Examiners or the School Ethics Commission to settle the record. The Commissioner, on a party's motion, may review such determination or, at [his or her] **the Commissioner's** discretion, may direct correction of the record.

(c) If it appears, at any time during an appeal's pendency, that evidence unadduced in the proceedings before the State Board of Examiners or the School Ethics Commission may be material to the issues on appeal, the Commissioner may order, on a party's motion or at [his or her] **the Commissioner's** discretion and on terms [he or she] **the Commissioner** deems appropriate, the record on appeal be supplemented by the taking of additional evidence and the making of findings of fact thereon by the State Board of Examiners or School Ethics Commission.

6A:4-2.7 Time for filing and service of briefs

(a) - (c) (No change.)

(d) If a respondent fails to meet the filing deadline for an answer brief, the record may be closed and the Commissioner may consider the matter on the record before [him or her] **the Commissioner**.

Subchapter 3. Motions

6A:4-3.1 General provisions

(a) - (d) (No change.)

(e) Except as provided [in] **at** N.J.A.C. 6A:4-3.5, an opposing party shall have 10 days after service of the moving party's papers to serve and file papers in opposition. The opposing party's brief shall explain clearly the grounds for opposition, annexing any papers relied on that were not included in the moving party's appendix. If no opposing brief is filed, the Commissioner may consider the motion unopposed.

(f) (No change.)

6A:4-3.4 Motion for leave to appeal an interlocutory order, decision, or action

(a) (No change.)

(b) Motions for leave to appeal shall conform to the requirements [of] **at** N.J.A.C. 6A:4-3.1, except a brief in support of the motion also shall include the merits of the issue(s) sought to be appealed.

(c) (No change.)

6A:4-3.5 Emergency relief in matters on appeal

(a) Applications for emergency relief shall be made by motion conforming to the requirements [of] **at** N.J.A.C. 6A:4-3.1. Opposing parties shall be given reasonable opportunity under the circumstances to file papers in response to an application for emergency relief.

(b) (No change.)

6A:4-3.6 Motion for clarification and/or reconsideration of a decision of the Commissioner on appeal

(a) A motion for clarification and/or reconsideration of a Commissioner's decision rendered pursuant to this chapter shall be served and filed within 10 days after the Commissioner files [his or her] **the** decision. The motion shall conform to the requirements [of] **at** N.J.A.C. 6A:4-3.1 and shall include a copy of the decision for which clarification and/or reconsideration is sought.

(b) - (d) (No change.)

Subchapter 4. Review and Decision

6A:4-4.3 Commissioner's decision

(a) (No change.)

(b) The Commissioner's decision shall be mailed to all parties or their representatives of record [and shall be deemed filed three days after the date of such mailing].

6A:4-4.4 Relaxation of rules

(a) The rules of this chapter shall be construed to secure a just determination, simplicity of procedure, fairness in administration, and elimination of unnecessary delay. Unless otherwise stated, **the Commissioner may relax** any rule not reflecting a statutory requirement or an applicable rule of administrative procedure [may be relaxed by the Commissioner, in his or her discretion,] if strict adherence to the rule is deemed inappropriate or unnecessary or would result in injustice.

(b) Briefing on appeals and motions shall be in accordance with this chapter. If the Commissioner deems it necessary to expedite proceedings or protect the interests of the parties, the Commissioner may modify time schedules or direct additional submissions [at his or her discretion] or by leave upon motion of a party.