

**STATE BOARD OF EDUCATION  
ADMINISTRATIVE CODE  
COMMENT/RESPONSE FORM**

This comment and response form contains comments from and since the November 7, 2018, meeting of the State Board of Education when the rulemaking was considered at First Discussion Level.

<b>Topic:</b>	Controversies and Disputes	<b>Meeting Date:</b>	December 5, 2018
<b>Code Citation:</b>	N.J.A.C. 6A:3	<b>Level:</b>	Proposal
<b>Division:</b>	Executive Services	<b>Completed by:</b>	Office of Controversies & Disputes

**Summary of Comments and Agency Responses:**

The following is a summary of the comments received from State Board of Education (State Board) members and members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

A. Kathy Goldenberg, Vice President  
State Board of Education

- 1. COMMENT:** The commenter suggested moving the proposed rulemaking to Proposal Level at the next State Board meeting rather than Second Discussion due to the technical nature of the proposed amendments. **(A)**

**RESPONSE:** The Department welcomes the opportunity to proceed directly to Proposal Level.



**State of New Jersey**  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

**Proposal Level**  
**December 5, 2018**

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

LAMONT O. REPOLLET, ED.D.  
*Commissioner*

TO: Members, State Board of Education

FROM: Lamont O. Repollet, Ed.D.  
Commissioner

SUBJECT: N.J.A.C. 6A:3, Controversies and Disputes

REASON  
FOR ACTION: Amendments

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

SUNSET DATE: July 5, 2024

### **Summary**

The Department of Education (Department) proposes to amend N.J.A.C. 6A:3, Controversies and Disputes. This chapter sets forth the rules of procedure established by the Department for the filing of petitions with the Commissioner of Education (Commissioner) to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.

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

The following summarizes the proposed amendments:

### **Subchapter 1. General Provisions**

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

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

The Department proposes an amendment at N.J.A.C. 6A:3-1.1(b)6, which currently states that the chapter establishes special rules for hearings prior to suspension or revocation of school bus driver endorsements pursuant to N.J.S.A. 18A:39-28 et seq., to amend the statutory reference to N.J.S.A. 18A:39-26 et seq. The proposed amendment is necessary because the "School Bus

Safety Act” is codified at N.J.S.A. 18A:39-26. The same amendment is proposed at the heading of Subchapter 12 and N.J.A.C. 6A:3-12.1(a) and (c)1.

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

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

This section defines words and terms used throughout the chapter.

The Department proposes an amendment to the definition of “filing,” which means “receipt of an original paper by an appropriate officer of the Department. With the prior approval of the Director of the Office of Controversies and Disputes, and generally up to a maximum of 10 pages, filings may be made by facsimile when they otherwise conform to requirements for submission and are accompanied by a statement that the original document will follow by mail or hand delivery.” The Department proposes to replace “an original paper” with “a document, in either paper or electronic form” and “by facsimile” with “by regular or electronic mail,” respectively. The Department also proposes to delete the requirements that facsimile filings must be pre-approved, not exceed 10 pages, conform to submission requirements, and be accompanied by a statement that the original document will follow by mail or hand delivery. The proposed amendments will allow parties to submit documents to the Department electronically.

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

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

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

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

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

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

The Department proposes to amend N.J.A.C. 6A:3-8.1(a), which allows pro se petitioners to file petitions if they use a specific Department form or prepare a letter that follows a particular format, to replace references to specific PDF and Word documents with “forms provided by the Department.” The proposed amendment reflects that all forms will be available on the

Department's website in the same format to enable electronic filing and to allow the Department to relocate the forms, as necessary, without a regulatory amendment.

The Department also proposes amendments at N.J.A.C. 6A:3-8.1(a)2, which, in part, states the Bureau will fax a received petition from a pro se petitioner and its supporting materials to the respondent district board of education and executive county superintendent, to replace "Bureau" with "Office" to reflect the correct title. The Department also proposes to add "or electronic mail" after "by facsimile" to enable the Office to alert via e-mail the district board of education and executive county superintendent of a residency appeal.

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

### **Social Impact**

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

### **Economic Impact**

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

### **Federal Standards Statement**

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

### **Jobs Impact**

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

### **Agriculture Industry Impact**

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

### **Regulatory Flexibility Analysis**

Certain entities that qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., such as approved private schools for students with disabilities and

small companies providing services or materials to district boards of education, are expected to comply with the chapter's procedures if they choose to initiate, or are named as a party in, a dispute arising under applicable school laws. It is unlikely that a small business would initiate or be party to the type of proceeding governed by the chapter. However, the burden of compliance with the chapter's rules is minimal and is offset by the benefit of having a clearly defined mechanism for adjudication of controversies and disputes. The proposed amendments impose no reporting, recordkeeping, or further compliance requirements on small businesses; rather, the proposed amendments could alleviate the burden of mailing or faxing required filings by allowing for electronic submission.

### **Housing Affordability Impact Analysis**

The proposed amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood the proposed amendments would evoke a change in the average costs associated with housing because the proposed amendments will allow for the electronic submission of filings related to controversies and disputes arising under school laws.

### **Smart Growth Development Impact Analysis**

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

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

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

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

**N.J.A.C. 6A:3, CONTROVERSIES AND DISPUTES**

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## CHAPTER 3. CONTROVERSIES AND DISPUTES

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 6A:3-1.1 Purpose and scope

- (a) This chapter sets forth the rules of procedure for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws in accordance with N.J.S.A. 18A:6-9.
- (b) This chapter also establishes special rules of procedure for specific types of controversies in accordance with the requirements of the following statutes:
  - 1. The filing of tenure charges pursuant to N.J.S.A. 18A:6-10 through 17.5;
  - 2. 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]26 et seq.
- (c) This chapter shall not apply to district boards of education seeking restoration of budget reductions by governing bodies or boards of school estimate. In accordance with N.J.S.A. 18A:7F-5e(3), such restorations shall be sought pursuant to the

provisions of N.J.A.C. 6A:23A-9.7.

- (d) This chapter shall not apply to appeals of decisions of the State Board of Examiners suspending or revoking teaching certificates, decisions of the School Ethics Commission finding violation of the School Ethics Act, **or** interlocutory decisions of the State Board of Examiners or the School Ethics Commission[, or requests for relief arising out of legal decisions of the State Board of Education]. In accordance with P.L. 2008, c. 36, such appeals and requests shall be made pursuant to the provisions of N.J.A.C. 6A:4.

### **6A:3-1.2 Definitions**

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

“ALJ” means an administrative law judge assigned by the Director of the Office of Administrative Law to preside over contested cases pursuant to N.J.S.A. 52:14F-1 et seq.

“Commissioner” means the Commissioner of Education or a designated assistant commissioner to whom the Commissioner has delegated the authority to hear and decide a controversy or dispute pursuant to N.J.S.A. 18A:4-33 and 34.

“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 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.

“Department” means the New Jersey [State] Department of Education.

“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.

“Filing” means receipt of [an original] **a document, in either paper or electronic form**, by an appropriate officer of the Department. [With the prior approval of the Director of the Office of Controversies and Disputes, and generally up to a maximum of 10 pages, filings] **Filings** may be made by **regular or electronic mail, or** facsimile [when they otherwise conform to

requirements for submission and are accompanied by a statement that the original document will follow by mail or hand delivery]. Parties requesting return of a stamped copy of any filing must include an extra copy of the document, together with a self-addressed envelope stamped with sufficient postage for this purpose. Filings received after the close of business (4:15 P.M.) shall be deemed filed on the next business day.

“Indispensable party” means a person(s) without whose inclusion a matter cannot proceed or adequate judgment cannot be entered.

“Interested person(s)” means a person(s) who will be substantially, specifically, and directly affected by the outcome of a controversy before the Commissioner.

“OAL” means the Office of Administrative Law established pursuant to N.J.S.A. 52:14F-1 et seq.

“Proof of service” means the provision of proof, pursuant to N.J.A.C. 6A:3-1.3(h), of the delivery of a paper by mail or in person to a party, person, or entity to whom or to which papers are required to be transmitted.

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

“Representative” means an attorney or other person as permitted by the rules of the OAL

appearing on behalf of a party in proceedings governed by this chapter.

“Rules of the OAL” means the New Jersey Uniform Administrative Procedure Rules, N.J.A.C.

1:1.

“State district superintendent” means the superintendent of a school district under State intervention, as appointed or retained pursuant to N.J.S.A. 18A:7A-3 et seq.

**6A:3-1.4 Format of petition of appeal**

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

(NAME OF PETITIONER(S)), : BEFORE THE COMMISSIONER  
PETITIONER(S), : OF EDUCATION OF NEW JERSEY  
V.  
(NAME OF RESPONDENT(S)), : PETITION

RESPONDENT(S). :

Petitioner, \_\_\_\_\_, residing at \_\_\_\_\_, whose telephone number is \_\_\_\_\_, fax number is \_\_\_\_\_ and email address is \_\_\_\_\_, hereby requests the Commissioner of Education to consider a controversy which has arisen between petitioner and respondent whose address is \_\_\_\_\_, pursuant to the authority of the Commissioner to hear and determine controversies under the school law (N.J.S.A. 18A:6-9), by reason of the following facts:

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

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

\_\_\_\_\_

Signature of petitioner or  
representative

Date \_\_\_\_\_

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

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

my knowledge and belief.

---

Signature of petitioner

[Sworn and subscribed to before me this

\_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

(month) (year)

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

- (b) A petition submitted by a pro se petitioner that substantially includes the requisite information as set forth in (a) above shall be accepted for filing notwithstanding that the petition does not conform to the prescribed technical format. However, where a petition does not meet minimal standards regarding parties, allegations, or relief sought, the petitioner shall be sent a letter noting the date of the submission's receipt and identifying the deficiencies deemed to constitute substantial noncompliance. The

matter will not be filed until the noted deficiencies are corrected.

- (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) Whenever such duplicate filing is discovered, and after the filing of the answer by the respondent, the case will be transmitted to the OAL for initial determination of which agency, if any, has the predominant interest in the outcome of the case.

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

**6A:3-8.1 Exceptions to general appeal requirements**

- (a) Appeals of district board of education determinations with respect to entitlement to attend school pursuant to N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22 shall generally proceed in accordance with the provisions of N.J.A.C. 6A:3-1, except as set forth below.

1. Petitions in letter form shall be accepted from pro se petitioners, provided that such petitioners use the form provided [at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word)] **by the Department** or prepare a letter wherein they:
  - i. Identify themselves by name, address, telephone number, and, where available, fax number and e-mail address;
  - ii. Identify the respondent district board of education;
  - iii. Clearly indicate that they are appealing from a determination of ineligibility to attend school in the school district based upon residency or domicile and provide the date on which such determination was made; and
  - iv. Include a signed attestation, which need not be notarized, that:
    - (1) Their claim of entitlement is based upon facts that are true to the best of their knowledge and belief; and
    - (2) They understand that they may be assessed tuition for the period of the child(ren)'s ineligible attendance and that such assessment may be recorded on the judgment docket of the court, if the Commissioner determines that the appeal has been abandoned or withdrawn and/or that the child(ren) are ineligible for a free education in the district.
2. Petitions from pro se petitioners need not be served on the respondent district board of education, but may be filed solely with the Office of Controversies and

Disputes (Office). Upon the receipt of any such petition, the [Bureau] **Office** will transmit, by facsimile **or electronic mail**, a copy of the petition and its appended supporting materials, if any, to the district board of education and the executive county superintendent, together with notice of the district board of education's obligation to answer the petition pursuant to N.J.A.C. 6A:3-1.5 and to effectuate, pursuant to N.J.S.A. 18A:38-1, the attendance of petitioners' child(ren) pending the outcome of the appeal.

- i. Nothing in (a)2 above shall preclude a 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 N.J.A.C. 6A:3-1.3, including proof of service on the district board of education. 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. In any instance where a petitioner has not included a copy of the district board of education's written determination of ineligibility as part of the petition, the district board of education shall file a copy of such determination with its answer.
  4. Petitions shall be filed by the parent or guardian with whom the child lives in the school district.
- (b) Where appeal is taken from a determination of ineligibility under 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 N.J.S.A. 18A:38-1.
  - (d) Where 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 N.J.A.C. 6A:22-6, may be ordered by the Commissioner in the decision finding abandonment of the appeal. Where 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 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) Where the petition of appeal is filed within 21 days following a notice of ineligibility, the student may continue to attend school while the appeal is pending. After the 21-day period, the petitioner shall file a petition in accordance with N.J.A.C. 6A:3-1.3 and a motion for emergent relief pursuant to N.J.A.C. 6A:3-1.6. The petitioner must prevail on the motion for emergent relief in order for the student to continue to attend school while the appeal is pending.
- (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 district. Such disputes shall be filed, and proceed, in accordance with the general provisions of N.J.A.C. 6A:3-1.

## **SUBCHAPTER 12. HEARINGS PRIOR TO SUSPENSION OR REVOCATION OF SCHOOL**

### **BUS DRIVER ENDORSEMENT PURSUANT TO N.J.S.A. 18A:39-~~28~~26 ET SEQ.**

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

- (a) Where a school bus driver has been notified by the Department's Criminal History Review Unit that a determination has been made that suspension or revocation, as the

case may be, of the driver's school bus endorsement is warranted pursuant to N.J.S.A. 18A:39-[28]26 et seq., because a child was left on the school bus to which the driver was assigned notwithstanding the driver's obligation to conduct a visual inspection at the end of the transportation route to assure that no pupil is left on the bus, the driver may contest such determination through the filing of a petition of appeal according to the procedures set forth in N.J.A.C. 6A:3-1.

1. Such petition shall be filed within 10 business days of the date of the Department's written notice to petitioner of such determination.
  2. In addition to the service requirements of 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, New Jersey Department of Education, PO Box 500, Trenton, New Jersey 08625-0500.
- (b) The following aspects of the Department's determination may be contested:
1. That a pupil was left on the bus at the end of the driver's route;
  2. That the incident in question was the driver's second offense;
  3. That the pupil was harmed as a result of foreseeable danger; and
  4. That the driver acted with gross negligence.
- (c) Where no petition is filed within the requisite time frame, or where a petitioner does not prevail before the Commissioner in demonstrating that the Department's determination was in error, the Department's Criminal History Review Unit will:
1. Notify the Motor Vehicle Commission of its obligation pursuant to N.J.S.A. 18A:39-[28]26 et seq., to suspend or revoke, as the case may be, the driver's school bus endorsement; and

2. Notify the driver's employer that the driver is ineligible, for the period of suspension or permanently, as the case may be, for continued employment as a school bus driver.