

## New Jersey Commissioner of Education

### Final Decision

Linda Amerman, Art Amerman, Elliott Banen,  
Byron Chapin, Erin Chapin, Susan Graglia,  
Lou Graglia, Doug Gold, Elena Gold, Carol Eng,  
Jodi Goffredo, Kris Pawelko, Alla Safir-Krause,  
Cynthia Phillips, and Kerri Sirinides,

Petitioners,

v.

Board of Education of the Ramapo Indian Hills  
Regional High School District, Bergen County,

Respondent.

### Synopsis

Petitioners challenged the vote to appoint Brian DeLaite (DeLaite) to a vacant seat on the Board of Education of the Ramapo Indian Hills Regional High School District, contending that the vote was invalid because – per *Robert’s Rules of Order* – five affirmative votes were required, comprising a “majority of the entire membership,” to make this appointment. The Board asserted that, pursuant to *N.J.S.A. 18A:12-15(f)* and Board policy, only “a majority of the remaining members” after recusals, or four affirmative votes, were required to appoint DeLaite. The Board at the time of the vote to fill the vacancy consisted of 8 members, two of whom recused themselves, leaving a quorum of six members. Four members voted to appoint DeLaite, while two opposed the appointment. The parties submitted cross motions for summary judgment.

The ALJ found, *inter alia*, that: there are no issues of material fact in this matter and the case is ripe for summary decision; *N.J.S.A. 18A:12-15(f)* mandates that the vacancy in question be filled “[b]y a majority vote of the remaining members of the board after the vacancy occurs”; Board Policy #0143 was consistent with, and incorporated language from, the controlling statute; and the language upon which the petitioners relied from *Robert’s Rules of Order* cannot supersede *N.J.S.A. 18A:12-15* and Board Policy #0143. The ALJ concluded that because there were four affirmative votes for DeLaite, which constituted a majority of the remaining members following the recusals, the Board’s vote was valid and in accord with *N.J.S.A. 18A:12-15*. Accordingly, the ALJ granted the Board’s motion for summary decision.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter, finding that petitioners’ reliance on language from *Robert’s Rules of Order* is misplaced as *N.J.S.A. 18A:12-15*, which controls how board vacancies are filled in type II districts with elected boards of education, applies in this case. Accordingly, the Board’s motion for summary decision was granted, and the petition was dismissed.

<p>This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>
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301-23

OAL Dkt. No. EDU 00610-23

Agency Dkt. No. 365-12/22

## New Jersey Commissioner of Education

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Lou Graglia, Doug Gold, Elena Gold, Carol Eng,  
Jodi Goffredo, Kris Pawelko, Alla Safir-Krause,  
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Petitioners,

v.

Board of Education of the Ramapo Indian Hills  
Regional High School District, Bergen County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Respondent Board is a regional board of education. Petitioners challenged the Board's November 14, 2022, vote to appoint Brian DeLaite to a vacant seat. The material facts are uncontested. Due to the vacancy, the Board had eight members instead of its full membership of nine members. Two members recused themselves from voting because of prior interactions with DeLaite. A quorum existed even after the recusals. Ultimately, four members voted to appoint DeLaite, and two voted not to appoint him. Petitioners insisted that the vote was invalid because, per *Robert's Rules of Order*, five affirmative votes were needed for a "majority of the entire membership" to appoint DeLaite. Joint Exhibit J-5, at 6. In response, the Board asserted that,

pursuant to *N.J.S.A.* 18A:12-15(f) and Board policy, only “a majority of the remaining members” following the recusals, or four affirmative votes, was required to appoint DeLaite.

Once the matter was transmitted to the Office of Administrative Law (OAL), the parties cross-moved for summary decision and submitted a joint stipulation of facts and joint exhibits. Upon review of the parties’ submissions, the Administrative Law Judge (ALJ) granted the Board’s motion for summary decision. The ALJ found that *N.J.S.A.* 18A:12-15(f) mandated that the vacancy at issue here be filled “[b]y a majority vote of the remaining members of the board after the vacancy occurs.”<sup>1</sup> The ALJ further found that Board Policy #0143 was consistent with, and incorporated language from, the controlling statute. Additionally, the ALJ found that the language upon which petitioners relied from *Robert’s Rules of Order*, which the Board abides by, cannot supersede *N.J.S.A.* 18A:12-15 and Board Policy #0143. The ALJ concluded that because the four affirmative votes for DeLaite constituted a majority of the remaining members following the recusals, the Board’s vote was valid and in accord with *N.J.S.A.* 18A:12-15.

Upon review, the Commissioner adopts the ALJ’s thorough and well-reasoned decision as the final decision in this matter. Petitioners’ reliance on language from *Robert’s Rules of Order* §44:9(b), which discusses alternative circumstances in which “a majority of the entire membership” may be required for a valid vote, is misplaced. Joint Exhibit J-5, at 6. As the ALJ thoughtfully explained in the Initial Decision, the Legislature decided not to require a majority vote of the entire membership for purposes of appointing a new board member to fill a vacancy under *N.J.S.A.* 18A:12-15(f), as demonstrated by the statute’s plain language. See *DiPropsero v. Penn*, 183

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<sup>1</sup> *N.J.S.A.* 18A:13-11 requires that vacancies in membership of regional boards of education be filled in the same manner as vacancies in membership of boards of education of type II districts having elected boards of education. Consequently, *N.J.S.A.* 18A:12-15, which controls how board vacancies are filled in type II districts having elected boards of education, applies here.

N.J. 477, 492 (2005) (“The Legislature’s intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language.”).

As written, *N.J.S.A.* 18A:12-15(f) requires only “a majority vote of the remaining members of the board after the vacancy occurs,” and not a majority of the entire membership. The ALJ correctly found that had the Legislature wished to include such a provision in *N.J.S.A.* 18A:12-15(f), it would have done so expressly as it has in other sections of Title 18. *See, e.g., N.J.S.A.* 18A:6-11 (“by majority vote of its full membership”); *N.J.S.A.* 18A:15-2 (“by a majority vote of all of the members of the board”); *N.J.S.A.* 18A:16-8 (“by a recorded roll call majority vote of its full membership”). It is uncontested that more than half of the votes cast by the remaining members entitled to vote—excluding those members who recused themselves—were in favor of DeLaite’s appointment to the Board. That is precisely what was required under *N.J.S.A.* 18A:12-15(f) for a valid appointment. *See Robert’s Rules of Order* § 44:1 (defining “majority vote” as “more than half of the votes cast by persons entitled to vote, excluding blanks or abstentions”). Joint Exhibit J-5, at 1.

Accordingly, the Board’s motion for summary decision is granted, petitioners’ motion for summary decision is denied, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>2</sup>

  
ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 6, 2023  
Date of Mailing: October 11, 2023

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 00610-23

AGY. DKT. NO. 365-12/22

**LINDA AMERMAN, ET AL.,**

Petitioners,

v.

**BOARD OF EDUCATION OF THE  
RAMAPO INDIAN HILLS REGIONAL  
HIGH SCHOOL DISTRICT, BERGEN  
COUNTY,**

Respondent.

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**Carol Eng**, Lead Petitioner, pro se

**Matthew J. Giacobbe**, Esq., for Respondent (Cleary Giacobbe Alfieri Jacobs,  
attorneys)

Record Closed: August 2, 2023

Decided: August 28, 2023

BEFORE **THOMAS R. BETANCOURT**, ALJ:

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioners challenge the Board's vote regarding a vacancy.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on January 19, 2023, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held on March 23, 2023, and a prehearing order was issued on the same date.

The parties filed cross motions for summary decision. Petitioners filed their brief in support of their motion on April 28, 2023. Respondent filed brief in support of their motion on May 15, 2023.

The parties, together with their respective cross motions for summary decision, submitted a Stipulation of Undisputed Facts and Joint Exhibits J-1 through J-6.

Petitioners filed their responsive brief on July 7, 2023. Respondent indicated that it would not file a responsive brief on August 2, 2023, whereupon the record closed.

### **STIPULATION OF UNDISPUTED FACTS**

The parties submitted the following stipulation of facts, and I so **FIND** the following:

1. On or about September 29, 2022, former Board member James Setteducato, a representative from Wyckoff, resigned from the Board creating a vacant seat. At full membership, the Board consists of nine members. Following Mr. Setteducato's resignation, the Board consisted of eight members.
2. The Board held a regular public meeting on November 14, 2022. This meeting was simultaneously livestreamed and archived on the Board website. (J-1 in hyperlink format.)
3. On November 14, 2022, the Board interviewed two potential candidates — Brian

DeLaite and Michael Homaychak — for the vacant Board seat in open, public session at their regularly-scheduled Board meeting. All eight Board members were present at the meeting. (J-2.)

4. Two Board members — Robert Fortunato and John Carolan, both elected representatives from Wyckoff — recused themselves from interview process, discussions, and subsequent vote to fill the vacant seat. Member Fortunato publicly stated that he recused himself from the process as a result of “serving on another board with one of the applicants.” Member Carolan publicly stated that he recused himself from the process due to having “past interactions with one of the candidates.” See “J-2”; see also “J-1,” at 0:16:20.

5. Prior to the vote in public session at the November 14 meeting, then-Board Counsel Rodney Hara advised the Board that a vote to fill the seat would require a majority of the Board. Mr. Hara advised the Board that with two (2) recusals, four (4) “yes” votes would constitute a majority of the Board on a vote to fill the vacant seat. Board Member Judith Sullivan stated a point of order and formal objection to then-Board Counsel Rodney Hara’s definition of “majority vote of the remaining board members.” See “J-2”.

6. Board Policy #0143 states that, when voting to fill a vacant seat:

A vacancy in the membership of a regional Board of Education shall be filled in accordance with N.J.S.A. 18A:13-11. A vacancy shall be filled from the constituent districts represented by the former incumbents in the same manner as vacancies in the membership of Boards of Education of Type II districts having elected Boards of Education are filled.

A vacancy in the membership of a Board of Education shall be filled as follows:

1. By the Executive County Superintendent, if the vacancy is caused by:
  - a. The absence of candidates for election to the school Board; or

- b. The removal of a member because of lack of qualifications;
  - c. The failure of the Board to appoint a person to a vacancy within sixty-five days following its occurrence; or
2. By the Executive County Superintendent, to a number sufficient to make up a quorum of the Board if, by reason of vacancies, a quorum is lacking;
3. By special election within sixty days of the annual school election, if:
  - a. Two or more candidates qualified by law for membership on the school Board receive an equal number of votes in the annual school election. In the event that both candidates receive an equal number of votes in the special election, the vacancy shall be filled by the Executive County Superintendent; or
  - b. The annual election is disqualified due to improper election procedures.
4. By the Commissioner of Education if there is a failure to elect a member at the annual school election due to improper campaign practices; or
5. By a majority vote of the remaining members of the Board of Education after the vacancy occurs in all other cases.

The Board Secretary shall promptly notify the President of a vacancy to be filled by the Board. The President shall inform all other Board members. The Board will give public notice of the vacancy and invite any qualified person to submit a written request for consideration of his/her candidacy for the vacancy. The Board may also require candidates submit a resume with their written request.

In considering candidates who have expressed an interest in a vacancy, the Board of Education may interview candidates in public or executive session. The Board must vote to appoint a candidate to a vacancy in public session and there shall be no decisions made in executive session. In the event interviews are conducted in executive session, Board members, in the public session nomination and voting process, shall express their opinion in support of their vote so the public can witness any deliberations, policy formulation, and the decision making process of the Board.

A roll call vote will be conducted on candidates in the order the candidates were nominated with a second. If there are two or more vacancies, each



vacancy will be filled by a separate election process. The first candidate who receives the votes of a majority of the remaining Board members will be elected to the vacancy. In the event no candidate receives a majority vote of the remaining Board members, another election process shall be conducted between the two candidates receiving the highest number of votes.

(Board Policy #0143 J-3.)

7. The Board operates under Robert's Rules of Order. (J-4.)
  
8. Robert's Rules of Order §44:9(b) (Twelfth Edition) states that "a majority of the entire membership is a majority of the total number of those who are members of the voting body at the time of the vote." (J-5.)
  
9. At the November 14 meeting, in public session, the Board voted 4-2, with two (2) recusals, to appoint Brian DeLaite to the vacant seat, effective immediately, and set to expire upon the Board's organization meeting following the 2023 Annual School Election. See "J-2."
  
10. Mr. DeLaite was an unsuccessful candidate for the Board in the November 2022 election. (J-6.)
  
11. Petitioners filed a Pro Se Petition of Appeal on December 15, 2022 challenging the Board's appointment of Mr. DeLaite to the vacant seat.

## **LEGAL ANALYSIS AND CONCLUSION**

### **Standard for Summary Decision**

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

In the instant matter the parties agree that there are no material disputed facts, and have submitted a Stipulation of Undisputed Facts. Accordingly, the matter is ripe for summary decision.

### **School Board Vacancies**

N.J.S.A. 18A:12-15 states:

Vacancies in the membership of the board shall be filled as follows:

- a. By the county superintendent, if the vacancy is caused by the absence of candidates for election to the school board or by the removal of a member

because of lack of qualifications, or is not filled within 65 days following its occurrence;

- b. By the county superintendent, to a number sufficient to make up a quorum of the board if, by reason of vacancies, a quorum is lacking;
- c. By special election, if in the annual school election two or more candidates qualified by law for membership on the school board receive an equal number of votes. Such special election shall be held only upon recount and certification by the county board of elections of such election result, shall be restricted to such candidates, shall be held within 60 days of the annual school election, and shall be conducted in accordance with procedures for annual and special school elections set forth in Title 19 of the Revised Statutes. The vacancy shall be filled by the county superintendent if in such special election two or more candidates qualified by law for membership on the school board receive an equal number of votes;
- d. By special election if there is a failure to elect a member at the annual school election due to improper election procedures. Such special election shall be restricted to those persons who were candidates at such annual school election, shall be held within 60 days of such annual school election, and shall be conducted in accordance with the procedures for annual and special school elections set forth in Title 19 of the Revised Statutes;
- e. By the commissioner if there is a failure to elect a member at the annual school election due to improper campaign practices; or
- f. By a majority vote of the remaining members of the board after the vacancy occurs in all other cases.

Each member so appointed shall serve until the organizational meeting following the next annual election unless the member is appointed to fill a vacancy occurring within the 60 days immediately preceding such election if the annual election is held in April, or occurring after the third Monday in July if the election is held in November, to fill a term extending beyond such election, in which case the member shall serve until the organizational meeting following the second annual election next succeeding the

occurrence of the vacancy, and any vacancy for the remainder of the term shall be filled at the annual election or the second annual election next succeeding the occurrence of the vacancy, as the case may be.

In the matter at hand, the applicable section would be subsection f., which states: By a majority vote of the remaining members of the board after the vacancy occurs in all other cases.

Board Policy #0143 requires the Board to follow N.J.S.A. 18A:12-15 when filling a vacancy on the Board.

Roberts Rules of Order, in Rule 44:9(b) states “A majority of the entire membership is a majority of the total of those who are members of the voting body at the time of the vote.”

The question herein arises as to what controls the action of the Board regarding its vote to replace the member who resigned.

What controls the manner in which a vacant Board seat is filled are N.J.S.A. 18A:12-15 and Board Policy #0143. Roberts Rules of Order do not, and cannot, supersede N.J.S.A. 18A:12-15 and Board Policy #0143.

N.J.S.A. 18A:12-15 does not require a majority vote of the full membership. Many other statutes pertaining to boards of education do require a majority vote of the full membership. See N.J.S.A. 18A:6-11 (“by majority vote of its full membership”); N.J.S.A. 18A:15-2 (“by majority vote of all of the members of the board”); N.J.S.A. 18A:16-8 (“majority vote of its full membership”); N.J.S.A. 18A:17-5 (“majority vote of its full membership of the board”); N.J.S.A. 18A:17-14.1 (“by a majority vote of all members of the board”); N.J.S.A. 18A:17-15 (“majority vote of the full membership of the board”); N.J.S.A. 18A:20-5 (“majority vote of its full membership of the board”); N.J.S.A. 18A:20-37 (“by a majority vote of all its members”) N.J.S.A. 18A:25-1 (“majority vote of the full membership of the board”); N.J.S.A. 18A:27-1 (“majority vote of the full membership of the board”); N.J.S.A. 18A:29-14 (“majority vote of the full membership of the board”);

N.J.S.A. 18A:33-1 (“majority vote of the full membership of the board”); N.J.S.A. 18A:34-1 (“majority vote of the full membership of the board”); N.J.S.A. 18A:38-6 (“by a majority vote of all the members of the board of education”); N.J.S.A. 18A:51-1 (“by a majority vote of all of the members of each such board”); and N.J.S.A. 18A:51-11 (“majority vote of its full membership”). Yet the Legislature chose not to use the term of art “majority vote of its full membership” when enacting N.J.S.A. 18A:12-15(f).

The legislative history of N.J.S.A. 18A:12-15(f) shows that it was amended in December 1996 to add the words “by a majority vote of the remaining members of” the board.

The Senate Education Committee Statement to the bill states: “This bill specifies that when a member of a school board in a Type 23 II district resigns, the vacancy will be filled by a majority vote of the remaining members of the board. Under an interpretation of the present statute, it is possible for the member who resigns to vote on the appointment of a successor.”

The Assembly Education Committee statement to the bill states: “As amended by committee, this bill specifies that when a member of a school board in a Type II district resigns, the vacancy will be filled by a majority vote of the remaining members of the board after the vacancy has occurred. Under an interpretation of the present statute, it is possible for the member who resigns to vote on the appointment of a successor. The committee amended the bill to add language clarifying that the vote of the remaining members of the board will occur after the vacancy has occurred. This bill was pre-filed for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.” Had the Legislature intended N.J.S.A. 18A:12-15(f) to require a majority vote of the full membership they would have included the same in the statute. They did not.

In the instant matter, the remaining members of the board totaled eight. At the meeting where Mr. DeLaité was selected to replace Mr. Setteducato all eight remaining members were present. Two of those members recused themselves and stated their reasons for recusal on the record, notwithstanding Petitioners’ assertion that they did

not. There remained a quorum of six voting members. Of those six members four members voted in the affirmative. These four affirmative votes constituted a majority of the remaining members, and their vote was in accordance with N.J.S.A. 18A:12-15(f).

Petitioners in their brief define the issues as follows:

1. Did the former majority members of the 2022 Ramapo Indian Hills Board of Education uphold, preserve and ensure the public confidence, trust and respect of the people who elected them?
2. Did the former majority members of the 2022 Ramapo Indian Board of Education dutifully abide by the policies and regulations, and use integrity and ethical procedures to select the best qualified candidate to serve on the open Wyckoff seat on the Board?

Neither of the two above noted issues were set forth in the due process petition and are not considered herein. The issue is the legality of the vote to place Mr. DeLaite on the Board.

Also in their brief, Petitioners seek to introduce unrelated, and unsupported facts, none of which have any bearing on the legality of the vote to place Mr. DeLaite on the Board. They are, therefore, not considered herein.

Respondent, in its brief, cites two cases regarding plurality votes in filling a vacant board seat that predate the 1996 amendment to N.J.S.A. 18A: 12-15(f): Polonsky, et al. v. Red Bank Board of Education, 1967 S.L.D. 93 (Comm'r of Educ. Apr. 25, 1967); and Corda v. Willingboro Board of Education, 1987 S.L.D. 337 (Dec. 26, 1986), aff'd 1987 S.L.D. 349 (Comm'r of Educ. Feb. 5, 1987). Respondent makes a compelling argument as to the validity of the vote in question intertwining the two above cases with the amendment to the statute. However, the undersigned determines that the analysis above as to the legislative history, and the lack of the words "full membership" in the statute is sufficient to determine that the vote to fill the vacancy at issue herein was valid.

Based upon the above I **CONCLUDE** there are no genuine issues of material facts as they relate to the due process petition, and Respondent is entitled to prevail as a matter of law.

**ORDER**

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED**; and

It is further **ORDERED** that Petitioners' motion for summary decision is **DENIED**; and

It is further **ORDERED** that Petitioners' due process petition is **DISMISSED** with prejudice.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

August 28, 2023  
DATE

  
THOMAS R. BETANCOURT, ALJ

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

jb



**APPENDIX**

List of Moving Papers

For Petitioners:

Brief in support of motion for summary decision

Reply brief in opposition to respondent's motion for summary decision

For Respondent:

Motion for summary decision

Brief in support of motion for summary decision

Joint Filings:

Stipulation of Undisputed Facts

Joint Exhibits:

J-1 November 14, 2022 meeting hyperlink

J-2 Minutes of November 14, 2022 meeting

J-3 Board Policy #0143

J-4 Robert's Rules of Order

J-5 Robert's Rules of Order, Chapter XIII, §44

J-6 November 2022 election results from Bergen County Clerk's Office

J-7 Pro Se Petition of Appeal filed December 15, 2022

Other Pleadings and Filings:

Answer to Petition of Appeal and Separate Defenses