

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules

Readoption with Amendments: N.J.A.C. 1:1

Adopted New Rule: N.J.A.C. 1:1-18.9

Proposed: December 1, 2014, at 46 N.J.R. 2299(a).

Adopted: May 12, 2015, by Laura Sanders, Acting Director, Office of Administrative Law.

Filed: May 18, 2015, as R.2015 d.096, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Effective Dates: May 18, 2015, Readoption;
June 15, 2015, Amendments and New Rule.

Expiration Date: May 18, 2022.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required because the rules readopted with amendments and new rule are promulgated in implementation of the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq., and are not subject to any Federal standards or requirements.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 1:1.

Full text of the adopted amendments and new rule follows:

1:1-2.1 Definitions

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

...
“Director” means the Director and Chief Administrative Law Judge of the Office of Administrative Law.
...

1:1-3.1 Commencement of contested cases in the State agencies

(a) (No change.)

(b) A request for a contested case hearing may not be filed with the Office of Administrative Law by the individual or entity requesting the hearing, except as set forth in N.J.A.C. 1:4B-3.1.

1:1-4.2 Settlement by agencies prior to transmittal to the Office of Administrative Law

If an agency attempts settlement prior to transmitting the matter to the Office of Administrative Law, settlement efforts may be conducted in any manner the agency believes may be appropriate and productive. A copy of the agency’s settlement process and procedures shall be filed with the Director. The agency may utilize its own personnel or may request in writing to the Director of the Office of Administrative Law the services of an administrative law judge. An administrative law judge who conducts pre-transmission settlement efforts at the request of an agency will not thereafter be assigned to hear the case if settlement efforts are unsuccessful and the case is transmitted.

1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a)-(e) (No change.)

(f) The completed transmittal form and one copy of any attachments shall be filed with the Clerk of the Office of Administrative Law.

(g) Where the case involves a permitting or licensing decision of the Department of Environmental Protection, the Department shall be required to produce and certify a permitting record within 30 days after the filing of the contested case. This deadline may be extended by an administrative law judge upon the unanimous agreement of the parties. The production and certification of the Department’s permitting record, in accordance with this subsection, shall not limit the ability of the parties to further supplement the record. The Department shall file the certified record with the administrative law judge. If a case has not yet been assigned, the certified record shall be filed with the Clerk.

1:1-9.1 Scheduling of proceedings

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

(c) The Clerk may schedule a settlement conference whenever such a proceeding may be appropriate and productive.

(d) (No change.)

(e) A proceeding on the papers may be scheduled in accordance with N.J.A.C. 1:1-14.8 in any class of suitable cases which the Director of the Office of Administrative Law and the transmitting agency agree could be lawfully decided on the papers.

(f) (No change.)

(g) The Director may, on a temporary basis and when required by exigent circumstances, schedule hearings notwithstanding deadlines otherwise set forth in statute.

SUBCHAPTER 15. EVIDENCE RULES

1:1-15.8 Witnesses; requirements for testifying; testifying by telephone

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

(e) Testimony of a witness may be presented by telephone or by video conference call, as prescribed by the Director, if, before the hearing begins, the judge finds there is good cause for permitting the witness to testify by telephone or video conference. In determining whether good cause exists, the judge shall consider:

1.-5. (No change.)

(f) (No change.)

1:1-18.1 Initial decision in contested cases

(a) Except as provided in N.J.A.C. 1:1-18.9, when a case is not heard directly by an agency head, the judge shall issue an initial decision which shall be based exclusively on:

1. The testimony, documents, and arguments accepted by the judge for consideration in rendering a decision;

2. Stipulations; and

3. Matters officially noticed.

(b) (No change.)

(c) At the judge’s discretion, an initial decision or recommended report may be filed in the form of a checklist in appropriate cases as prescribed by the Director after consultation with the applicable State agency.

Recodify existing (c)-(g) as (d)-(h) (No change in text.)

1:1-18.8 Extensions of time limits

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

(e) An agency head may request a single extension of the time limit for filing a final decision for good cause. He or she shall sign and forward a proposed order to the Director of the Office of Administrative Law. If the Director approves the request, he or she shall within 10 days of receipt of the proposed order sign the proposed order and return it to the transmitting agency head, who shall issue the order and cause it to be served on all parties. Any additional request for an extension is contingent upon the unanimous consent of the parties. To be considered for approval, proposed orders for extensions must state the names of the consenting parties. First requests for extensions and second requests where the agency is only requesting the extension pursuant to N.J.A.C.

1:1-17.8(c) are exempt from the requirement to obtain unanimous consent.

(f) Any order granting an extension must set forth the factual basis constituting good cause for the extension, and establish a new time for filing the decision or exceptions and replies. Extensions for filing initial or final decisions may not exceed 45 days from the original decision due date. Additional extensions of not more than 45 days each may be granted only for good cause shown. For final decisions, the order must additionally state that unanimous consent to extend the due date was obtained from the parties.

1:1-18.9 Final decisions by administrative law judges

(a) Where the head of an agency determines that the decision or recommended report of the administrative law judge, in a case or in a class of cases, will serve as the final agency decision, the head of agency shall file with the Director a written order describing the case or class of cases. The order shall apply to all cases described therein commenced with the agency after the order's issuance.

(b) For all cases in (a) above, the decision of the administrative law judge shall be the final agency decision on the matter and it will be deemed adopted by the head of agency on the date the decision is filed with the agency. The head of agency shall not have the opportunity to reject or modify the administrative law judge's recommended report or decision.

(c) The order delegating final decisions may be rescinded or modified by order filed by the head of agency with the Director. The rescission or modification shall be effective for all cases filed with the agency after the rescission or modification order is filed with the Director.

SUBCHAPTER 20. ALTERNATIVE DISPUTE RESOLUTION BY THE OFFICE OF ADMINISTRATIVE LAW

1:1-20.1 Scheduling of alternative dispute resolution

(a) The Director may assign an administrative law judge or other personnel to conduct mediation or other forms of alternative dispute resolution with regard to any matter filed with the Office of Administrative Law.

Recodify existing (a)-(b) as (b)-(c) (No change in text.)

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Family Development Hearings

Readoption with Amendments: N.J.A.C. 1:10

Proposed: November 17, 2014, at 46 N.J.R. 2219(a).

Adopted: May 12, 2015, by Laura Sanders, Acting Director, Office of Administrative Law.

Filed: May 18, 2015, as R.2015 d.097, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f), and (g).

Effective Dates: May 18, 2015, Readoption;

June 15, 2015, Amendments.

Expiration Date: May 18, 2022.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

The rules readopted with amendments implement the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 et seq. They also implement Federal regulations at 7 CFR § 273.16, 7 CFR § 273.15, and 45 CFR § 205.10 regarding fair hearings and Federal assistance programs. The requirements of these rules are the same as those imposed by Federal law.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 1:10.

Full text of the adopted amendments follows:

1:10-5.1 Representation at hearing

An applicant or recipient may appear at a proceeding without legal representation or may be represented by an attorney or by a relative, friend or other spokesperson pursuant to the procedures set forth in N.J.A.C. 1:1-5.4; 7 C.F.R. 273.15(f); 45 C.F.R. 205.10(a)(3)(iii); and 7 C.F.R. 273.15(p)(2).

1:10-9.2 Notice of hearing

(a) In cases involving Temporary Aid to Needy Families (TANF) or food stamp benefits, except for emergency hearings, the Clerk shall send written notice of the filing and hearing to each party at least 10 days before the scheduled hearing date.

1. (No change.)

(b) (No change.)

1:10-10.1 Discovery

(a) The CWA or MWD shall provide the applicant or recipient or his or her authorized representative opportunity to review the entire case file and all documents and records to be used in the hearing. (7 C.F.R. 273.15(i)(1); 45 C.F.R. 205.10(a)(13)(i).)

(b) (No change.)

1:10-12.2 Emergency fair hearings in TANF or General Assistance cases

(a) When DFD determines that a request for hearing should be scheduled as an emergency fair hearing:

1. DFD shall notify the Office of Administrative Law of the hearing request on the same day as the request is received.

2. (No change.)

3. Notice of the time, date, and place of the hearing shall be transmitted to DFD within one day after the Office of Administrative Law is notified of the hearing request. DFD shall prepare the OAL transmittal form and notify the CWA or MWD, the petitioning applicant/recipient, or the petitioner's representative of the scheduled hearing on the day that it receives notification of the hearing time and place.

4.-6. (No change.)

1:10-14.1 Attendance at hearing

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

(d) If neither the applicant/recipient nor a representative appears at a hearing concerning an alleged intentional program violation and timely adequate notice of the hearing was given to the applicant/recipient, the hearing shall be conducted ex parte. 7 C.F.R. 273.16(e); N.J.A.C. 10:87-11.5(a)4i.

1:10-14.2 Intentional program violation hearings

At an intentional program violation hearing, the charged applicant/recipient has a right to remain silent and may refuse to answer questions. 7 C.F.R. 273.16(e)(2)(iii).

1:10-14.3 Independent medical assessment

For good cause, the administrative law judge may order an independent medical assessment or professional evaluation when the hearing involves medical issues. Such medical assessment shall be obtained at CWA or MWD expense. 7 C.F.R. 273.15(m)(2)(v); 7 C.F.R. 273.16(e)(2)(ii); 45 C.F.R. 205.10(a)(1)(iii)(10).

1:10-18.1 Initial decision (other than emergency hearing matters)

(a) In cases involving TANF benefits, an initial decision shall be issued within 21 days from the date of the hearing.

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