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Oct 13

R 3144 CERTIFICATION OF TENURE CHARGES

Filing of Written Charges and Certificate of Determination

A. Definition

1. For the purposes of Policy 3144 and this Regulation, “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 not 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.

B. **Procedures and Timelines Filing of Written Charges and Certificate of Determination – N.J.A.C. 6A:3-5.1**

1. **N.J.A.C. 6A:3-1.3 - Filing and Service of Petition of Appeal shall not apply in a case of tenure charges filed with the Commissioner against an employee of a Board of Education or a school district under full State intervention. In place of the usual petition, the Board or the State District Superintendent shall file written charges and the required certificate of determination with the Commissioner, together with the name of the attorney who is anticipated for administrative purposes will be representing the Board of Education or the State District Superintendent and proof of service upon the employee and the employee’s representative, if known. Such service shall be at the same time and in the same manner as charges are filed with the Commissioner.**
 - a. **In accordance with N.J.S.A. 34:13A-24, fines and suspensions imposed as minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S.A. 18A:6-10 where the negotiated**



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agreement between a Board of Education and the majority representative of the employees in the appropriate collective bargaining unit provides for such discipline. In these cases, tenure charges shall not be filed to impose minor discipline on a person serving under tenure.

- 21.** In all instances of the filing and certification of tenure charges, **except charges filed against a teacher, Principal, Assistant Principal, or Vice Principal for reasons of efficiency pursuant to N.J.S.A. 18A:6-17.3** ~~other than for reasons of inefficiency~~, the following procedures and timelines shall be observed:
- a. Charges shall be stated with specificity as to the action or behavior underlying the charges and shall be filed in writing with the Secretary of the Board of Education or the State District Superintendent, accompanied by a supporting statement of evidence, both of which shall be executed under oath by the ~~person or persons~~ **person(s)** instituting such charges.
 - b. ~~Charges along~~ **Along** with the required sworn statement of evidence, **charges** shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date they were filed with the Secretary of the Board of Education or the State District Superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.
 - c. The affected tenured employee shall have an opportunity to submit to the Board of Education or the State District Superintendent a written statement of position and a written statement of evidence, both of which shall be executed under oath with respect thereto within fifteen days of receipt of the tenure charges.



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- d. Upon receipt of the tenured employee's written statements of position and evidence under oath, or upon expiration of the allotted fifteen-day time period, the Board of Education shall determine by a majority vote of its full membership, or the State District Superintendent shall determine, within forty-five days whether there is probable cause to credit the evidence in support of the charges and whether such charges, if credited, are sufficient to warrant a dismissal or reduction of salary. **In accordance with the provisions of N.J.S.A. 18A:6-13, if the Board of Education does not make a determination within forty-five days after receipt of the written charges, the charges shall be deemed to be dismissed and no further proceeding or action shall be taken.**
- e. The Board of Education or the State District Superintendent shall **provide**, within three working days, ~~provide~~ written notification of the determination to the employee against whom the charges has been made, in person or by certified mail to the last known address of the employee and the employee's representative, if known.
- f. ~~In the event~~ **If** the Board of Education or the State District Superintendent finds ~~that such~~ probable cause exists and the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the Board or the State District Superintendent shall **file**, within fifteen days, ~~file such~~ written charges with the Commissioner. The charges shall be stated with specificity as to the action or behavior underlying the charges and shall be accompanied by the required certificate of determination together with the name of the attorney who is anticipated for administrative purposes will be representing the Board **of Education** or State District Superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.
- g. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the Board of Education with respect to such charges shall take place at a closed/executive session meeting.



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32. ~~In the event~~ **If** the tenure charges are charges of inefficiency pursuant to **N.J.S.A. 18A:6-17.3**, except in the case of **Building Principals and Vice Principals in school districts under full State intervention**, where procedures are governed by the provisions of N.J.S.A. 18A:7A-45 and such rules as may be promulgated to implement it, the following procedures and timelines shall be observed:

~~a. Initial charges of inefficiency shall be stated with specificity as to the nature of the inefficiency alleged and filed by the appropriate administrator with the Secretary of the Board of Education or the State District Superintendent along with a statement of evidence in support thereof executed under oath. In the event the charges are against the Chief School Administrator, they shall be filed, along with the required statement of evidence, by a designated Board member(s) upon the direction of the Board of Education as ascertained by majority vote of the full Board.~~

~~b. The Board of Education, through its Board Secretary, or the State District Superintendent, upon receipt of the charges of inefficiency and the written statement of evidence in support thereof shall cause a copy of same to be transmitted to the affected employee and the employee's representative, if known, within three working days. Proof of mailing or hand delivery shall constitute proof of transmittal.~~

~~c. The Board of Education, through its Board Secretary, or the State District Superintendent shall direct that the employee be informed in writing that, unless such inefficiencies are corrected within the minimal ninety day period, or any longer period provided by the Board of Education or State District Superintendent, the Board or the State District Superintendent intends to certify those charges of inefficiency to the Commissioner pursuant to N.J.S.A. 18A:6-11.~~



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d. Concurrent with notifying the employee of such charges of inefficiency, the Board of Education or the State District Superintendent shall direct that there be a modification of the individual professional development plan mandated by N.J.A.C. 6A:32 4.3 or 4.4, to assure that such plan addresses the specific charges of inefficiency and complies with the timelines established for correction.

e. Upon completion of the minimal ninety day period for improvement, or such longer period as may be provided by the Board of Education or the State District Superintendent, the administrator(s) responsible for bringing such charges to the attention of the Board or the State District Superintendent shall notify the Board or the State District Superintendent in writing of what charges, if any, have not been corrected. In the event the charges are against a Chief School Administrator, the Board of Education shall determine by majority vote of the full Board what charges, if any, have not been corrected.

f. The Board of Education or the State District Superintendent, upon receipt of the written notification or upon the Board's determination in the case of a Chief School Administrator, shall notify the affected employee in writing that all of the inefficiencies have been corrected or, in the alternative, which of the inefficiencies have not been corrected. The time from the expiration of the minimal ninety day period, or such longer period as may be provided by the Board of Education or the State District Superintendent, to the notification of the employee by the Board of Education or the State District Superintendent shall not exceed thirty calendar days.

g. In the event that certain charges of inefficiency have not been corrected, the affected employee shall have an opportunity to respond within fifteen days of the receipt of said notification of inefficiency by filing a statement of evidence under oath in opposition to those charges.



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~~h. Upon receipt of such written statement of evidence under oath or upon expiration of the allotted fifteen day time period, the Board of Education shall determine by a majority vote of its full membership, or the State District Superintendent shall determine, within forty five days, whether there is probable cause to credit the evidence in support of the charges and that such charges, if credited, are sufficient to warrant a dismissal or reduction in salary.~~

~~i. In the event the Board of Education or the State District Superintendent finds that such probable cause exists and that the charges, if credited, are sufficient to warrant a dismissal or reduction of salary, then the Board or the State District Superintendent shall, within fifteen days, file such written charges with the Commissioner. The charge(s) shall be stated with specificity as to the nature of the inefficiency alleged, and shall be accompanied by the required certificate of determination together with the name of the attorney who is anticipated for administrative purposes will be representing the Board of Education or State District Superintendent and proof of service upon the employee and the employee's representative, if known. Such service shall be at the same time and in the same manner as the filing of charges with the Commissioner.~~

a. When the conditions described in N.J.S.A. 18A:6-17.3.a(1) or (2) and as outlined in Policy 3144.12 have been satisfied, the Superintendent shall promptly file with the Secretary of the Board a charge of inefficiency.

b. The charges of inefficiency shall be transmitted to the affected tenured employee and the employee's representative, if known, within three working days of the date the charges were filed with the Secretary of the Board or State District Superintendent. Proof of mailing or hand delivery shall constitute proof of transmittal.



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- c. The affected tenured employee shall have an opportunity within ten days of receipt to submit to the Board or State District Superintendent a written statement of position under oath demonstrating how the school district failed to comply with evaluation procedures.
 - d. Within thirty days of the filing, the Board or State District Superintendent shall forward a written charge to the Commissioner unless the Board or the State District Superintendent determines the evaluation process has not been followed. Such determination shall be made by a majority vote of the Board's full membership or by the State District Superintendent.
 - e. Upon receipt of the charge, the Commissioner or his or her designee shall examine the charge. The charge shall again be served upon the employee at the same time it is forwarded to the Commissioner and proof of service shall be included with the filed charge. The individual against whom the charge is filed shall have ten days to submit to the Commissioner a written response to the charge.
 - f. Within five days of the individual's deadline to submit a written response to the charge, the Commissioner shall appoint an arbitrator to hear the case and refer the case to the arbitrator, unless he/she determines the evaluation process has not been followed.
 - g. Pursuant to N.J.S.A. 18A:6-11, all deliberations and actions of the Board of Education with respect to such charges shall take place at a closed/executive session meeting.
43. The provisions of **N.J.A.C. 6A:3-5.1** ~~this section~~ shall not apply to employees of Charter Schools, who are governed by the provisions of N.J.A.C. 6A:11-6.



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C. Format of Certificate of Determination

1. The certificate of determination ~~which~~ **that** accompanies the written charges shall contain a certification by the Board of Education Secretary or the State District Superintendent:
 - a. ~~That~~ **The** Board of Education or the State District Superintendent has determined the charges and the evidence in support of the charges are sufficient, if true in fact, to warrant dismissal or a reduction in salary;
 - b. Of the date, place, and time of the meeting at which such determination was made and whether ~~or not~~ the employee was suspended and, if so, whether such suspension was with or without pay; **and**
 - c. ~~That such~~ **The** determination was made by a majority vote of the **whole number of members of the full** Board of **Education** or by the State District Superintendent in accordance with N.J.S.A. 18A:7A-39; ~~and~~.
 - ~~d. In the case of a charge of inefficiency, that the employee was given at least ninety days prior written notice of the nature and particulars of the alleged inefficiency.~~
2. The provisions of **N.J.A.C. 6A:3-5.2** ~~this section~~ shall not apply to employees of Charter Schools, who are governed by the provisions of N.J.A.C. 6A:11-6.

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

1. **Except as specified in N.J.A.C. 6A:3-5.1(c)5,** ~~An~~ individual against whom tenure charges are certified shall have fifteen days from the date such charges are filed with the Commissioner to file a written response to the charges. Except as to the time for filing, the answer shall conform to the requirements of N.J.A.C. 6A:3-1.5(a) through (d).



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- a. Consistent with N.J.A.C. 6A:3-1.5(g), nothing in N.J.A.C. 6A:3-5.3 precludes the filing of a motion to dismiss in lieu of an answer to the charges, provided ~~that such~~ **the** motion is filed within the time allotted for the filing of an answer. Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the ~~Administrative Law Judge (ALJ)~~ **arbitrator** if the motion is to be briefed following transmittal to **an arbitrator** ~~the Office of Administrative Law (OAL).~~
2. Upon written application by the person against whom charges are filed, the Commissioner may extend the time period for the filing of an answer upon a finding of good cause shown consistent with the provisions of N.J.S.A. 18A:6-16. Such application shall be received prior to the expiration of the fifteen-day answer period, **or the ten-day answer period specified in N.J.A.C. 6A:3-5.1(c),** and a copy shall be served upon the charging Board of Education or the State District Superintendent. The Board of Education or State District Superintendent shall promptly notify the Commissioner of any opposition to the request.
 - a. A request for extension ~~which that~~ is ~~not filed within~~ **received after** the fifteen-day period allotted for **an** answer to tenure charges, **or after the ten-day period allotted in N.J.A.C. 6A:3-5.1(c)** will be considered only in the event of demonstrated emergency or other unforeseeable circumstance such that the request could not have been made within the requisite filing period.
3. ~~Where~~ **If** no answer is filed within the requisite time period and no request for extension is made, or ~~such~~ **if the** request is denied by the Commissioner, or ~~where~~ the charged employee submits an answer or other responsive filing indicating the employee does not contest the charges, the charges shall be deemed admitted by the charged employee.
4. The provisions of **N.J.A.C. 6A:3-5.3** ~~this section~~ shall not apply to employees of Charter Schools, who are governed by the provisions of N.J.A.C. 6A:11-6.



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

1. **Except as specified in N.J.A.C. 6A:3-5.1(c), w** Within **fifteen ten** days of receipt of the charged party's answer or expiration of the time for its filing, the Commissioner shall determine whether such charge(s) are sufficient, if true, to warrant dismissal or reduction in salary. **Where** **If** the charges are determined insufficient, they shall be dismissed and the parties shall be notified accordingly. **Where** **If** the charges are determined sufficient, the matter shall, **within ten days of such determination,** be transmitted **immediately** to the **OAL an arbitrator** for further proceedings, unless the Commissioner retains the matter pursuant to N.J.A.C. 6A:3- **1.11 or** 1.12.
 - a. A notice of transmittal shall be issued to the parties by the Department of Education on the same date as the matter is transmitted to **an arbitrator the OAL.**
2. Where a party to a tenure matter **se** requests, the Commissioner may agree to hold the matter in abeyance at any time prior to transmittal to **an arbitrator the OAL.** Thereafter, requests to hold the matter in abeyance shall be directed to the **arbitrator OAL Clerk or the ALJ in accordance with the rules of the OAL.** Any request for abeyance, whether directed to the Commissioner or the **arbitrator OAL,** shall be consistent with the intent of N.J.S.A. 18A:6-16 as amended by P.L. 1998, c.42.

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

1. Once tenure charges are certified to the Commissioner, **such charges they** may be withdrawn or settled only with **the Commissioner's** approval. Any proposed withdrawal or settlement, whether submitted to the Commissioner or to the **arbitrator ALJ,** shall address the following standards established by the State Board of Education in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990 *School Law Decisions (S.L.D.)* 842, 846):



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- a. Accompaniment by documentation as to the nature of the charges;
 - b. Explication of the circumstances justifying settlement or withdrawal;
 - c. Consent of both the charged and charging parties;
 - d. Indication **that** the charged party entered into the agreement with a full understanding of his or her rights;
 - e. A showing **that** the agreement is in the public interest; and
 - f. **Where If** the charged party is a teaching staff member, a showing **that** the teaching staff member has been advised of the Commissioner's duty to refer tenure determinations resulting in loss of position to the State Board of Examiners for possible suspension or revocation of certificate.
2. A settlement agreement shall not propose terms that would restrict access to information or records deemed public by law or result in misrepresentation of the reason for an employee's separation from service. **Where If** tenure charges have been certified to the Commissioner by a Board of Education, any proposed settlement shall indicate, by signature of the Board Attorney or inclusion of a Board of Education resolution authorizing settlement, that the Board of Education has consented to the terms of the settlement.
 3. A proposed withdrawal or settlement of tenure charges shall be submitted to the Commissioner prior to transmittal of such charges to the **arbitrator OAL**; thereafter, it shall be submitted to the **arbitrator ALJ** ~~in accordance with applicable rules of the OAL.~~
 4. **If Where** tenure proceedings against a teaching staff member are concluded prior to adjudication because the charged party has unilaterally resigned or retired, the Commissioner may refer the matter to the State Board of Examiners for action against the charged party's certificate as it deems appropriate, when such referral is warranted under the provisions governing resignation or retirement prior to conclusion of tenure charges as set forth in N.J.A.C. 6A:9-17.4.



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5. **If** ~~Where~~ a proposed settlement requires the tenured employee to relinquish a certificate issued by the State Board of Examiners, upon approval of the settlement agreement, the Commissioner shall forward the matter to the State Board of Examiners for proceedings in accordance with N.J.A.C. 6A:9-17.11.

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