

[Second Reprint]
SENATE, No. 125

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators PALAIA, INVERSO, Ewing and MacInnes

1 AN ACT concerning certain administrative hearings, ¹[amending and]¹
2 supplementing ¹[P.L.1968, c.410, amending N.J.S.18A:6-16 and
3 N.J.S.18A:6-28 and supplementing]¹ P.L.1978, c.67 (C.52:14F-1
4 et seq.)¹, P.L.1968, c.410 (C.52:14B-1 et seq.), chapter 6 of Title
5 18A of the New Jersey Statutes and amending N.J.S.18A:6-16 and
6 N.J.S.18A:6-28¹.

7
8 **BE IT ENACTED** by the Senate and General Assembly of the State
9 of New Jersey:

10

11 1. (New section) a. The Director of the Office of Administrative
12 Law shall, within 12 months after the effective date of this act,
13 establish within the Office of Administrative Law an education unit
14 consisting of administrative law judges having special expertise in
15 education law. The number of administrative law judges in the unit
16 shall be proportional to the number and complexity of education cases
17 referred to the office.

18 b. Upon the establishment of the education unit, all contested
19 cases, as defined in section 2 of P.L.1968, c.410 (C.52:14B-2),
20 ¹except those cases in which criminal charges are also filed,¹ arising
21 under the Tenure Employees Hearing Law, article 2 of chapter 6 of
22 Title 18A of the New Jersey Statutes, referred to the Office of
23 Administrative Law shall be assigned to and adjudicated by the
24 administrative law judges in the education unit.

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26 2. (New section) Any statute rule or regulation to the contrary
27 notwithstanding, all contested cases assigned to the education unit
28 pursuant to section 1 of this act shall be adjudicated pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.)
30 in an expeditious and timely manner except as follows:

31 a. The discovery process shall begin immediately upon the referral

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SED committee amendments adopted October 28, 1996.

² Senate SBA committee amendments adopted June 12, 1997.

1 of the case to the Office of Administrative Law and shall be completed
2 within 30 days of that referral.

3 b. The pre-hearing conference shall be held within 20 days of the
4 referral of the case to the Office of Administrative Law.

5 c. The hearing shall be held within 45 days after the pre-hearing
6 conference, and no later than 65 days from the referral of the case to
7 the Office of Administrative Law.

8 d. Transcripts ¹if ordered by the parties¹ shall be provided within
9 15 days of the conclusion of the hearing and all briefs shall be
10 submitted to the Administrative Law Judge within 30 days of the
11 conclusion of the hearing ¹or receipt of the transcripts by the parties,
12 whichever is later¹.

13

14 ¹[3. Section 10 of P.L.1968, c.410 is amended to read as follows:

15 10. In contested cases:

16 (a) The parties shall not be bound by rules of evidence whether
17 statutory, common law, or adopted formally by the Rules of Court. All
18 relevant evidence is admissible, except as otherwise provided herein.
19 The administrative law judge may in his discretion exclude any
20 evidence if he finds that its probative value is substantially outweighed
21 by the risk that its admission will either (i) necessitate undue
22 consumption of time or (ii) create substantial danger of undue
23 prejudice or confusion. The administrative law judge shall give effect
24 to the rules of privilege recognized by law. Any party in a contested
25 case may present his case or defense by oral and documentary
26 evidence, submit rebuttal evidence and conduct such
27 cross-examination as may be required, in the discretion of the
28 administrative law judge, for a full and true disclosure of the facts.

29 (b) Notice may be taken of judicially noticeable facts. In addition,
30 notice may be taken of generally recognized technical or scientific
31 facts within the specialized knowledge of the agency or administrative
32 law judge. Parties shall be notified either before or during the hearing,
33 or by reference in preliminary reports or otherwise, of the material
34 noticed, including any staff memoranda or data, and they shall be
35 afforded an opportunity to contest the material so noticed. The
36 experience, technical competence, and specialized knowledge of the
37 agency or administrative law judge may be utilized in the evaluation of
38 the evidence, provided this is disclosed of record.

39 (c) All hearings of a State agency required to be conducted as a
40 contested case under this act or any other law shall be conducted by
41 an administrative law judge assigned by the Director and Chief
42 Administrative Law Judge of the Office of Administrative Law, except
43 as provided by this amendatory and supplementary act. A
44 recommended report and decision which contains recommended
45 findings of fact and conclusions of law and which shall be based upon
46 sufficient, competent, and credible evidence shall be filed, not later

1 than 45 days after the hearing is concluded, with the agency in such
2 form that it may be adopted as the decision in the case and delivered
3 or mailed, to the parties of record with an indication of the date of
4 receipt by the agency head; and an opportunity shall be afforded each
5 party of record to file exceptions, objections, and replies thereto, and
6 to present argument to the head of the agency or a majority thereof,
7 either orally or in writing, as the agency may direct. The head of the
8 agency, upon a review of the record submitted by the administrative
9 law judge, shall adopt, reject or modify the recommended report and
10 decision no later than 45 days after receipt of such recommendations;
11 except that for cases adjudicated by the education unit pursuant to
12 section 1 of P.L. , c. (C.)(now pending before the Legislature as
13 this bill), the Commissioner of Education shall adopt, reject or modify
14 the recommended report and decision no later than 30 days after
15 receipt of such recommendations. Unless the head of the agency
16 modifies or rejects the report within such period, the decision of the
17 administrative law judge shall be deemed adopted as the final decision
18 of the head of the agency. The recommended report and decision shall
19 be a part of the record in the case. For good cause shown, upon
20 certification by the director and the agency head, the time limits
21 established herein may be subject to extension.

22 (d) A final decision or order adverse to a party in a contested case
23 shall be in writing or stated in the record. A final decision shall
24 include findings of fact and conclusions of law, separately stated and
25 shall be based only upon the evidence of record at the hearing, as such
26 evidence may be established by rules of evidence and procedure
27 promulgated by the director.

28 Findings of fact, if set forth in statutory language, shall be
29 accompanied by a concise and explicit statement of the underlying
30 facts supporting the findings. The final decision may incorporate by
31 reference any or all of the recommendations of the administrative law
32 judge. Parties shall be notified either personally or by mail of any
33 decision or order. Upon request a copy of the decision or order shall
34 be delivered or mailed forthwith by registered or certified mail to each
35 party and to his attorney of record.

36 (e) Except where otherwise provided by law, the administrative
37 adjudication of the agency shall be effective on the date of delivery or
38 on the date of mailing, of the final decision to the parties of record
39 whichever shall occur first, or shall be effective on any date after the
40 date of delivery or mailing, as the agency may provide by general rule
41 or by order in the case. The date of delivery or mailing shall be
42 stamped on the face of the decision.

43 (cf: P.L.1993,c.343,s.3)]¹

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45 13. (New section) Notwithstanding the provisions of section 10 of
46 P.L.1968, c. 410 (C. 52:14B-10) or any other law, rule or regulation

1 to the contrary, if a case is adjudicated by the education unit pursuant
 2 to section 1 of P.L. .c. (C.)(now pending before the Legislature
 3 as this bill), the Commissioner of Education, upon a review of the
 4 record submitted by the administrative law judge, shall adopt, reject
 5 or modify the recommended report and decision no later than 30 days
 6 after receipt of the recommendations.¹

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 8 4. N.J.S.18A:6-16 is amended to read as follows:

9 18A:6-16. Upon receipt of such a charge and certification, or of a
 10 charge lawfully made to ²[him] the commissioner², the commissioner
 11 or the person appointed to act in ²[his] the commissioner's² behalf in
 12 the proceedings shall examine the charges and certification [and if he].
 13 The individual against whom the charges are certified shall have 15
 14 days to submit a written response to the charges to the commissioner.
 15 ²The commissioner shall render a determination on the matter within
 16 15 days immediately following the 15 day period provided for a
 17 written response to the charges.²

18 If¹, following receipt of the written response to the charges, ¹the
 19 commissioner is of the opinion that they are not sufficient to warrant
 20 dismissal or reduction in salary of the person charged, he shall dismiss
 21 the same and notify said person accordingly. If, however, he shall
 22 determine that such charge is sufficient to warrant dismissal or
 23 reduction in salary of the person charged, he shall [conduct a hearing
 24 thereon within a 60-day period after the receipt thereof upon
 25 reasonable notice to all parties in interest] within 10 days of making
 26 that determination refer the case to the Office of Administrative Law
 27 for ¹[adjudication] further proceedings¹.

28 (cf: N.J.S.18A:6-16)

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 30 5. N.J.S.18A:6-28 is amended to read as follows:

31 18A:6-28. An appeal to the State board shall be taken in the
 32 manner prescribed by rules of the board, within 30 days after the
 33 decision appealed from is filed, and the board shall have power to hear
 34 and determine any such appeal. The board shall render its decision on
 35 ¹[the] a tenure¹ appeal within 60 days after it is filed.

36 (cf: P.L.1994, c.48, s.53)

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 38 6. This act shall take effect immediately.

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 43 Provides for expedited hearing process in teacher tenure cases.