

## CHAPTER 36

**AN ACT** concerning controversies and disputes arising under the school laws, supplementing chapters 6 and 12 of Title 18A of the New Jersey Statutes, amending P.L.1991, c.393, and repealing parts of the statutory law.

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

C.18A:6-9.1 Commissioner's determinations considered final agency action; appeals; request for relief.

1. a. Notwithstanding the provisions of any law or regulation to the contrary, on and after the effective date of this act determinations made by the Commissioner of Education in all controversies and disputes arising under the school laws shall be considered to be final agency action under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and appeal of that action shall be directly to the Appellate Division of the Superior Court.

b. For all cases pending before the State Board of Education on the effective date of this act for which the State board has not rendered a decision, the decision of the commissioner shall be deemed to be the final agency action under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.). Any appeal of the commissioner's decision to the Appellate Division of the Superior Court shall be filed within 45 days of the effective date of this act.

c. Any request for relief arising out of a State Board of Education decision rendered prior to the effective date of this act pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall be considered and determined by the commissioner.

C.18A:6-38.4 Appeal of determination of State Board of Examiners.

2. Notwithstanding the provisions of any law or regulation to the contrary, any appeal of a determination of the State Board of Examiners shall be to the Commissioner of Education whose determination shall be a final agency action under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and appeal of that action shall be directly to the Appellate Division of the Superior Court.

C.18A:12-29.1 Appeal of determination of School Ethics Commission.

3. Notwithstanding the provisions of any law or regulation to the contrary, any appeal of a determination of the School Ethics Commission shall be to the Commissioner of Education whose determination shall be a final agency action under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and appeal of that action shall be directly to the Appellate Division of the Superior Court.

C.18A:6-9.2 Authority of State BOE to consider appeal terminated.

4. Notwithstanding the provisions of any law or regulation to the contrary, on and after the effective date of this act the State Board of Education shall have no authority to consider an appeal from any commissioner determination.

5. Section 9 of P.L.1991, c.393 (C.18A:12-29) is amended to read as follows:

C.18A:12-29 Complaint procedures.

9. a. Any person, including a member of the commission, may file a complaint alleging a violation of the provisions of this act or the Code of Ethics for School Board Members as set forth in section 5 of P.L.2001, c.178 (C.18A:12-24.1), by submitting it, on a form prescribed by the commission, to the commission. No complaint shall be accepted by the commission unless it has been signed under oath by the complainant. If a member of the commission submits the complaint, the member shall not participate in any subsequent proceedings on that complaint in the capacity of a commission member. If a commission member serves on the school board of, or is employed by, the school district which employs or on whose board the school official named in the complaint serves, the commission member shall not participate in any subsequent proceedings on that complaint.

b. Upon receipt of a complaint, the commission shall serve a copy of the complaint on each school official named therein and shall provide each named school official with the opportunity to submit a written statement under oath. The commission shall thereafter decide by majority vote whether probable cause exists to credit the allegations in the complaint. If the commission decides that probable cause does not exist, it shall dismiss the complaint and shall so notify the complainant and any school official named in the complaint. The dismissal shall constitute final agency action. If the commission determines that probable cause exists, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), and shall so notify the complainant and each school official named in the complaint.

In making a determination regarding an alleged violation of the Code of Ethics for School Board Members, the burden of proof shall be on the accusing party to establish factually a violation of the code. A decision regarding a complaint alleging violations of the code shall be rendered by the commission within 90 days of the receipt of the complaint by the commission.

c. Upon completion of the hearing, the commission, by majority vote, shall determine whether the conduct complained of constitutes a violation of this act, or in the case of a board member, this act or the code of ethics, or whether the complaint should be dismissed. If a violation is found, the commission shall, by majority vote, recommend to the commissioner the reprimand, censure, suspension, or removal of the school official found to have violated this act, or in the case of a board member, this act or the code of ethics. The commission shall state in writing its findings of fact and conclusions of law. The commissioner shall then act on the commission's recommendation regarding the sanction.

d. Any appeal of the commission's determination regarding a violation of this act, or in the case of a board member, this act or the code of ethics, and of the commissioner's decision regarding the sanction shall be in accordance with the provisions of P.L.2008, c.36 (C.18A:6-9.1 et al.).

e. If prior to the hearing the commission determines, by majority vote, that the complaint is frivolous, the commission may impose on the complainant a fine not to exceed \$500. The standard for determining whether a complaint is frivolous shall be the same as that provided in subsection b. of section 1 of P.L.1988, c.46 (C.2A:15-59.1).

f. Notwithstanding the provisions of subsections c. and d. of this section, the commission shall be authorized to determine and impose the appropriate sanction including reprimand, censure, suspension or removal of any school official found to have violated this act who is an officer or employee of the New Jersey School Boards Association. Any action of the commission regarding a violation of P.L.1991, c.393 (C.18A:12-21 et seq.) or the sanction to be imposed in the event that the school official involved is an officer or employee

of the New Jersey School Boards Association shall be considered final agency action and an appeal of that action shall be directly to the Appellate Division of the Superior Court.

6. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Education may adopt, immediately upon filing with the Office of Administrative Law, such rules and regulations as the commissioner deems necessary to implement the provisions of P.L.2008, c.36 (C.18A:6-9.1 et al.). The rules and regulations adopted by the commissioner shall expire no later than 12 months following the effective date of P.L.2008, c.36 (C.18A:6-9.1 et al.). Rules and regulations shall thereafter be amended, adopted, or re-adopted by the commissioner pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

Repealer.

7. The following sections are repealed:

N.J.S.18A:6-26 through N.J.S.18A:6-29.

8. This act shall take effect immediately.

Approved July 7, 2008.