

POLICY

1. Scope

The following rules govern the hearings and adjudication of disputes concerning tenure, personnel matters of employees, not classified under Title 11A of the New Jersey Statutes and other disputes arising under the higher education laws contained in Title 18A of the New Jersey Statutes.

2. Definitions

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

- A. "**Board**" means the Board of Trustees of Ocean County College.
- B. "**Chairperson**" means the Chairperson of the Board of Trustees of Ocean County College.
- C. "**Days**" means calendar days.
- D. "**Secretary**" means the Secretary of the Board of Trustees of Ocean County College.
- E. "**Hearing**" means an adjudicatory process involving a dispute defined in this policy. Hearings shall not include student disciplinary matters, grievance procedures under the collective bargaining agreement, and such other disputes and hearings expressly not authorized to be determined by the Board of Trustees or its designees.

3. Commencement of Proceeding

- A. In general, to initiate a proceeding before the Board, a petitioner shall file with the Secretary a petition conforming to the requirements set forth in Section 5 below. Said Petition shall be on a form approved by the Vice President of Human Resources and made available to those persons wishing to file a petition, see attached Form 1390-1.
- B. Tenure Charges
To initiate proceedings for the dismissal or reduction in compensation of tenured faculty pursuant to N.J.S.A. 18A:6-18, a written charge of the cause(s) preferred against the faculty member signed by the person making the charge shall be filed with the Secretary.

4. Limitations Period

- A. Bidding Matters
A petition challenging the award or non-award of a contract under the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., must be filed within ten (10) days of actual or constructive notice of the contract award or non-award being challenged.
- B. In General
Except for a petition seeking relief under N.J.S.A. 18A:64A-25.1 et seq. (bidding matters), all other petitions must be filed within 45 days of actual or constructive notice of the determination or action being challenged.

5. Contents of Petition

The petition must:

- A. state the name and address of each petitioner;
- B. identify the decision-maker(s) whose determination or action is being challenged and, where the challenged determination has been reduced to writing, and include as an exhibit a copy of the written determination;
- C. set forth a plain and concise statement of the essential facts, in separately numbered allegations, giving rise to the essential facts, in separately numbered allegations;
- D. state the section(s) of Title 18A under which the controversy has arisen;
- E. contain a statement of the relief sought;
- F. be executed under oath see attached Form 1390-1.

6. Contents of Tenure Charge

A tenure charge must:

- A. state the name and address of the respondent faculty member;
- B. set forth a plain and concise statement of the essential facts, in separately numbered allegations, upon which the charge is based;
- C. contain a statement of the relief sought;
- D. be signed by the person making the charge.

7. Caption: Designation of Respondent

- A. The petition shall be captioned "In the Matter of the Petition of (name of petitioner). "Tenure charges shall be captioned "In the Matter of the Tenure Hearing of (name of charged faculty member)." In all cases, the captioned should reflect that the proceeding is "Before the Board of Trustees of Ocean County College."
- B. The College attorney or his/her designee shall be responsible for representing the college administration.

8. Exhaustion of Remedies

The failure by a petitioner to exhaust all remedies and procedures available internally through the college administration or under bargaining unit contracts shall be a complete bar to any proceedings under these rules.

9. Election of Remedies

If the claim asserted in any petition is the subject of any pending grievance under a collectively negotiated contract or the subject of any other administrative or court proceeding, the matter shall not be brought to the Board until completion of the grievance or other administrative proceed, Court decision, and then only with respect to claims which have not been adjudicated by binding arbitration or other final agency action.

10. Service of Petition and Tenure Charges

A. In general

The Secretary shall serve a copy of the petition on the college president. If the college president has designated another member of the administration to serve as the respondent, the college president shall serve a copy of the petition on the designee.

B. Bidding Matters

In any case concerning the award on non-award of a contract under the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., the petitioner shall serve a copy of the petition on the successful bidder/contractor simultaneously with filing and shall file a proof of service along with the petition. Said successful bidders/contractors shall have the right to intervene in the hearing reflected in the petition.

C. Tenure Charges

The Secretary shall serve a copy of the tenure charges on the respondent faculty member.

D. Manner of Service

Service of the petition or tenure charges may be by personal delivery, campus mail, regular mail, certified mail, messenger or overnight delivery service or telecopier followed by one of the other acceptable methods of service. Proof of service shall be submitted at time of hearing as a condition precedent for said proceeding to continue.

11. Answer

Except as set forth in Section 12(A) below, an answer to a petition or tenure charge shall be filed within twenty (20) days after service of the petition or tenure charge. The answer shall admit or deny or give an explanatory statement in response to each allegation in the petition or tenure charge. Said answer shall

provide all factual responses to the allegations; a general denial will not be sufficient; any factual response(s) not contained in the answer shall be deemed waived by the respondent and the respondent shall not be permitted to raise said factual allegation(s) or response(s) at the time of the hearing. A copy of the answer shall be served on each petitioner or on the person filing the tenure charge, as the case may be, simultaneously with the filing of the answer and proof of service shall be filed along with the answer.

12. Intervention

A. Bidding Matters

In any case challenging the award or the non-award of a contract under the County College Contracts Law, N.J.S.A. 18A:64A-25.1 et seq., the successful bidder/contractor shall have the right to intervene by filing a notice of intervention along with an answer to the petition within ten (10) days of service of the petition.

B. Other matters

Intervention and participation in other than bidding cases shall be governed by N.J.A.C. 1:1-16.1, et seq.

13. Determination of Jurisdiction

A. Before Joinder

Upon the filing of a petition, the Chairperson shall review it to determine if it states a claim or claims over which the Board has jurisdiction pursuant to P.L. 1994, Ch. 48, Sec. 6f. If it appears from the fact of the petition that the Board does not have jurisdiction over one or more claims asserted in it, the Chairperson shall issue a written decision dismissing those claims over which the Board does not have jurisdiction.

B. After Joinder

Once an answer has been filed, objections to the subject matter jurisdiction may be raised at any time on motion of a party or on the Board's motion.

14. Standard of Review; Burden of Proof

A. In general

In order to prevail, the petitioner must demonstrate that the challenged action or determination was clearly erroneous factually, contrary to law or college policy, or otherwise arbitrary, capricious, or unreasonable.

B. Tenure charges

In matters involving the dismissal or reduction in compensation of tenured faculty pursuant to N.J.S.A. 18A:6-19, the college administration shall bear the burden of proof by a preponderance of the evidence.

15. Hearing Panel; Hearing Officer

The Board may determine to hear a matter itself or assign the matter for hearing to a hearing panel consisting of three Board members or an independent hearing officer approved by the Board of Trustees. In the event a hearing is held before a hearing panel or independent hearing officer, the panel or officer, as the case may be, shall issue a written report containing recommended findings of fact, conclusions of law and remedy, if any, in such form that it may be adopted by the Board as the final decision. Each party may file written exceptions to the report of a hearing panel or hearing officer within ten (10) days after receipt of the report. Replies to exceptions shall not be permitted except with the permission of the Chairperson for good cause shown. The Board shall issue a final decision pursuant to P.L. 1994, Ch. 48, Sec. 6f, which may accept, reject, or modify the report of a hearing panel or hearing officer or any aspect of it. The Board shall also secure the services of a stenographic reporter who shall provide a written transcript of the proceedings. The cost of same shall be borne by the Board.

16. Transmittal to Office of Administrative Law

Pursuant to N.J.S.A. 18A:6-18, contested cases involving the dismissal or reduction in compensation of tenured faculty shall be transmitted to the Office of Administrative Law for hearing and recommendation back to the Board of Trustees for final decision by said Board.

17. Hearing by Board; Quorum; Voting Eligibility

If the hearing is before the Board itself, the hearing may proceed on any occasion when there is a quorum of the Board present even if the quorum is not identical on each day of hearing. However, in order to deliberate and participate in a decision where the hearing has been held before the Board, a Board member who has not attended all the hearings must certify in writing that he or she has listened to tapes of all hearing sessions or reviewed the stenographic records from the member who was absent. The decision of the Board shall be of a majority of a quorum qualified to vote under this section.

18. Public Proceedings: Exceptions

A. Hearings

All evidentiary hearings before the Board, all proceedings on motions and other applications before the Board, and any oral arguments before the Board shall be conducted as private proceedings unless otherwise provided by statute, rule or regulation, or on an order of the Board for good cause shown. In considering whether to open a proceeding, the Board will consider the requirements of due process of law, other constitutional and statutory standards, and matters of public policy. The Board will also consider the need to protect parties or witnesses from undue embarrassment or deprivations of privacy, or to promote or protect other equally important rights or interests. Hearings before a hearing panel or hearing officer shall be private unless otherwise directed by the Board.

B. Board Deliberations

Board decisions shall be in public session unless the matter falls within one of the exceptions to the Open Public Meetings Act as set forth in N.J.S.A. 10:4-12 or otherwise provided by statute, rule, or regulation.

19. Subpoenas

Subpoenas may be issued, pursuant to N.J.S.A. 18A:6-20 by the Chairperson or his designee. Upon application on notice to the parties, a witness summoned may request the Chairperson or his designee to quash or modify a subpoena. The Chairperson or his designee may grant the application in whole or in part upon finding that the testimony or the evidence required to be produced is not relevant to any matter in question or that the subpoena is unreasonable or oppressive, or has been issued without reasonable time to produce the evidence requested.

20. Applicability of OAL Rules

The following sections of the Uniform Administrative Procedure Rules promulgated by the Office of Administrative Law, N.J.A.C. 1:1-1 et seq., shall govern insofar as applicable and where not inconsistent with these policies:

- N.J.A.C. 1:1-5.1 et seq. (Representation)
- N.J.A.C. 1:1-7.1 et seq. (Service & Filing of Papers; Format) (except 1:1-7.4)
- N.J.A.C. 1:1-10.1 et seq. (Discovery)
- N.J.A.C. 1:1-12.1 et seq. (Motions)
- N.J.A.C. 1:1-15.1 et seq. (Evidence Rules)
- N.J.A.C. 1:1-17.1 to 17.3 (Consolidation of Cases)

21. Emergent Relief

All applications for emergent relief shall be governed by N.J.A.C. 1:1-12.6 except that all such applications shall be submitted to and decided by the Chairperson or his designee.

22. Prehearing Conference

Prehearing conferences may be scheduled, in the discretion of the Chairperson, or his designee, a hearing panel or a hearing officer whenever necessary to foster an efficient and expeditious proceeding. When the hearing is to be held before the Board, any prehearing conferences shall be held before the Chairperson or his designee; otherwise, they shall be held before the hearing panel or hearing officer, as the case may be appropriate. If appropriate, a prehearing order addressing the items set forth in N.J.A.C. 1:1-13.2(a) may be issued. The prehearing order may be amended pursuant to N.J.A.C. 1:13.2((b) and (c)).

23. Recording of Proceedings

All proceedings shall be stenographically recorded. In addition any party wishing to have a sound recording device may be permitted to do so at their expense.

24. Construction and Relaxation

The rules governing proceeds before the Board shall be construed to secure a just determination, simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the Board or its designees if adherence to it would result in an injustice. In the absence of a rule, the Board may proceed in any manner compatible with these purposes and the laws governing same.

ADOPTED: January 23, 1995

Revised: April 22, 1996

Revised: February 28, 2000

Revised: September 22, 2003



Petition of Appeal **Form 1390-1**

HUMAN RESOURCES DEPARTMENT

Our mission is to process all employment issues, from recruitment to retirement, in a manner that is timely, efficient, courteous, and helpful.

Please complete this Petition in accordance with the attached Policy (Section 5) of the Board of Trustees and return the Petition to the Vice President of Human Resources. (attach additional sheets if necessary)

A. Print the name and address of each petitioner:

B. Identify the decision-maker(s) whose determination or action is being challenged and, where the challenged determination has been reduced to writing, include as an exhibit a copy of the written determination.

C.1. Set forth a plain and concise statement of the essential facts giving rise to the challenged decision.

C.2. List each allegation (separately numbered) that is supported by the essential facts cited in C.1.:

D. State the section(s) of New Jersey Statutes, Title 18A, under which the controversy has arisen.

(over)

