

## **Public Notice**

### **Education**

#### **State Board Of Education**

#### **Notice of Action on Petition for Rulemaking**

#### **Special Education Program**

#### **Special Education**

#### **Commencement of Case**

#### **Scheduling of Hearing by Office of Administrative Law**

#### **Due Process Hearings**

#### **N.J.A.C. 1:6A-3.1 and 9.1; and 6A:14-2.7**

Petitioner: Jamie Epstein, Esq.

**Take notice** that on February 15, 2023, the New Jersey State Board of Education (State Board) received a petition for rulemaking from the above petitioner, requesting the State Board amend N.J.A.C. 1:6A-3.1 and 9.1 and 6A:14-2.7.

N.J.A.C. 1:6A, Special Education Program, governs hearings at the Office of Administrative Law (OAL) that arise out of the special education program of the Department of Education (Department). N.J.A.C. 1:6A-3.1 specifies that the Department's Office of Special Education Programs (Office) shall immediately transmit cases upon the unsuccessful conclusion of the resolution process or mediation. N.J.A.C. 1:6A-9.1 permits adjournments at the request of a party, requires an adjournment to be for a specific time period, and provides that the adjournment extends the deadline for a decision. N.J.A.C. 1:6A, which is promulgated by the OAL, is the continuation of the process that is utilized by the Department, pursuant to N.J.A.C. 6A:14, which mirrors the Federal requirements pursuant to the Individuals with Disabilities Education Act (IDEA).

The petitioner sought to amend N.J.A.C. 1:6A-3.1 and 9.1 to replace “resolution process” with “resolution meeting.” The State Board does not have the authority to amend Title 1 of the New Jersey Administrative Code and, therefore, the parts of the petitioner’s request that relate to N.J.A.C. 1:6A-3.1 and 9.1 are denied as mentioned in the Notice of Receipt and Action on Petition for Rulemaking.

N.J.A.C. 6A:14-2.7 establishes the rules for due process hearings and resolution meetings when a student’s parent and a district board of education disagree regarding identification, evaluation, reevaluation, classification, or educational placement, the provision of a free, appropriate public education, or disciplinary action. The section relates to students with a disability and students identified as possibly having a disability.

When a parent requests a due process hearing or an expedited due process hearing, N.J.A.C. 6A:14-2.7(h) allows a district board of education to resolve a matter through a resolution meeting before proceeding to a due process hearing. The subsection requires the district board of education to conduct a resolution meeting with the parent and the relevant member(s) of the individualized education program (IEP) team who have specific knowledge of the facts identified in the request.

N.J.A.C. 6A:14-2.7(h)4 requires the Office to transmit the case to the OAL for a due process hearing if a due process hearing request is not resolved to the satisfaction of the parents within 30 days of the receipt of the request.

N.J.A.C. 6A:14-2.7(h)10 requires the parties to notify the Office, in writing, of the result of the resolution meeting. The Office is required to transmit, to the OAL, a matter that is not resolved or withdrawn after 30 days from the date the request was received.

The petitioner sought to amend N.J.A.C. 6A:14-2.7(h)4 to replace “within 30 days of the receipt of the petition” with “at the time of the resolution meeting or at mediation.” The petitioner also sought to amend the paragraph to require the Office to transmit the case “immediately.” The petitioner further sought to amend N.J.A.C. 6A:14-2.7(h)10 to delete the reference to the 30-day deadline.

The petitioner's request stated that a student is entitled to a final due process decision within 75 days of petition's filing date. The petition also stated that the existing regulations unnecessarily delay the student's right to a timely due process decision by requiring the school to consent to the student's request for transmittal. The petition further stated that the existing regulations allow the school district to unilaterally block a student's request to transmit the petition and the Department is complacent in unnecessarily delaying the student's right to a timely final decision.

The regulations at N.J.A.C. 6A:14-2.7 are consistent with the requirements of the IDEA, at 20 U.S.C. § 1415 (f)(1)(B)(ii), and its implementing regulations at 34 CFR 300.510, which provide for a 30-day resolution period prior to the commencement of a due process hearing before an independent hearing officer. The parties may request transmittal of a case prior to the expiration of the 30-day resolution period by agreeing to waive the resolution meeting altogether or by both parties agreeing, in writing, that no agreement is possible after the start of the mediation or resolution meeting. 34 CFR 300.510(c)(1) and (2). Therefore, mechanisms exist that would permit transmittal of a case before the end of the 30-day resolution period; however, *both* parties must agree to do so. 34 CFR 300.510(c)(1) and (2).

As the State educational agency, the Department is responsible for ensuring the implementation of the IDEA, which protects the rights afforded to children with disabilities and governs the delivery of special education and related services. The Department is also precluded from adopting State rules that conflict with the provisions of the IDEA or its implementing regulations. The petitioner's request would result in a conflict between N.J.A.C. 6A:14 and the IDEA and its implementing regulations.

Furthermore, requiring the Office to immediately transmit a matter at the end of a resolution meeting or mediation conference without the agreement of all parties would deprive the parties of

the opportunity to further consider what was discussed at the resolution meeting or mediation and possibly reach an agreement that would resolve the matter to the parents' satisfaction.

For all of the above-mentioned reasons, after due consideration pursuant to law, the petitioner's request is hereby denied.

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Angelica Allen-McMillan, Ed.D., Acting Commissioner  
Acting Secretary, N.J. State Board of Education