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EDUCATION

38 N.J.R. 2890(a)

STATE BOARD OF EDUCATION

Notice of Action on Petition for Rulemaking

N.J.A.C. 6A:3-5

Petitioner: Christine Gillespie.

Take notice that on April 4, 2006, the New Jersey Department of Education received a petition for rulemaking. The petitioner is Christine Gillespie, a New Jersey resident.

The petitioner requests that the Department amend N.J.A.C. 6A:3-5 to eliminate, as contrary to statute and adopted without adequate notice, all references to the State district superintendent's authority to certify tenure charges against employees in State-operated school districts. The current rules provide for the State district superintendent to function in lieu of the local district board of education in the filing and certification of such charges through the procedures set forth in the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 et seq.

The Department has concluded its review and believes that no amendments to the current rules are warranted. N.J.S.A. 18A:7A-35 through 18A:7A-39 clearly and unequivocally assign to the State district superintendent the power to act in the manner ordinarily assigned to local district boards of education throughout the school laws. Additionally, N.J.S.A. 18A:7A-42 specifically authorizes the State district superintendent to make all personnel determinations relative to the employment, transfer and removal of district employees, while N.J.S.A. 18A:7A-39a(1) empowers the State district superintendent to submit to determination controversies and disputes arising under the school laws. Even in those instances where the former *N.J.S.A. 18A:7A-48b* (now repealed; see P.L. 2005, c. 235, §40) required a matter to be brought before the State-operated district board of education for a vote, the statute expressly precluded the board from overriding the State district superintendent's determination. The Department, therefore, believes that the role assigned to the State district superintendent by the rules in question is fully consistent with applicable law. The Department further believes that the rules were adopted with ample public notice, including full compliance with the Administrative Procedure Act and extensive preproposal discussion at public meetings of the State Board of Education. The Department notes that the provisions at issue did not establish new procedures or requirements, but simply brought outdated rules to currency by acknowledging the existence of State-operated school districts and codifying long-accepted practice, based on the statutory scheme summarized above, as to the specific manner in which tenure charges were filed and certified in such districts.