

PUBLIC NOTICE

EDUCATION

STATE BOARD OF EDUCATION

Notice of Receipt and Action of Petition for Rulemaking

Special Education

Termination or Withdrawal from a Receiving School

N.J.A.C. 6A:14

Petitioner: Mary Kalapatapu.

Take notice that on April 24, 2017, the New Jersey State Board of Education (State Board) received a petition for rulemaking from the above petitioner requesting the State Board of Education amend N.J.A.C. 6A:14 to prohibit public schools that are receiving schools from being able to terminate a student's placement.

The petitioner specifically requests for the State Board to replace N.J.A.C. 6A:14-7.7(a) and (b) with the rules that govern choice student enrollment under the Interdistrict Public School Choice Program at N.J.A.C. 6A:12-5.1.

N.J.A.C. 6A:14-7.7(a) requires a receiving school that is considering the termination of a student's placement prior to the end of a student's academic year to immediately contact the district board of education. The current rule also requires the district board of education to convene an individualized education program (IEP) meeting within 10 school days of the notification from the receiving school. The rule further requires the district board of education to include in the IEP meeting the appropriate personnel from the receiving school, including at least one person who participated in making the recommendation to terminate placement. N.J.A.C. 6A:14-7.7(a)1 requires the IEP team to review the student's current IEP and determine his or her new placement with written notice of any change to the IEP and the new placement provided within 10 days of the IEP meeting. The paragraph also allows a student to be terminated from the current placement

after the district board of education has provided written notice to the student's parents. N.J.A.C. 6A:14-7.7(a) further requires the termination to be in accordance with the provisions of the contract between the receiving school and the district board of education.

N.J.A.C. 6A:14-7.7(b) requires a district board of education to convene an IEP meeting when the district board of education is considering the withdrawal of a student with a disability from a receiving school prior to the end of the student's academic year. The rule also requires the meeting to include appropriate personnel from the receiving school, a review of the current IEP by the IEP team, and a determination regarding the student's new placement. The rule also requires written notice of any changes to the IEP and the new placement to be provided within 10 days of the date of the IEP meeting. The rule further allows a student to be terminated from the current placement after the district board of education has provided written notice to the parents and requires the termination to be in accordance with the provisions of the contract between the receiving school and the district board of education.

In place of current N.J.A.C. 6A:14-7.7(a) and (b), the petitioner requests for the State Board to include the rules at N.J.A.C. 6A:12-5.1 that allow a choice student to remain enrolled in a choice district once accepted without submitting annual or periodic applications. The Interdistrict Public School Choice Program rules also obligate a choice district to retain a choice student until he or she graduates or voluntarily withdraws. The section also entitles any choice student enrolled in a choice district to remain enrolled in the school district until graduation if the choice program is terminated in that school district or Statewide. The section also establishes provisions for students who move while participating in the choice program.

The petitioner's request indicates the specific amendments to N.J.A.C. 6A:14-7.7 that would prevent school districts that accept non-resident students as an out-of-district placement in accordance with an IEP from being able to terminate a student for any reason. The petitioner asserts that school districts use N.J.A.C. 6A:14-7.7(a) and (b) as justification for terminating non-resident

students with disabilities in retaliation for a parent expressing concern about a student's treatment in the receiving school.

The petitioner's request also states existing N.J.A.C. 6A:14-7.7(a) and (b) are in violation of the Federal Americans with Disabilities Act and its implementing regulations, and Section 504 of the Rehabilitation Act of 1973 and its implementing regulations.

After reviewing the petition and applicable State law and rules, the Department of Education (Department) has determined that N.J.A.C. 6A:14-7.7(a) and (b) apply to "receiving schools." N.J.A.C. 6A:14-7.1(a) states "receiving schools" include educational services commissions, jointure commissions, regional day schools, county special services school districts, the Marie H. Katzenbach School for the Deaf, approved private schools for students with disabilities (that may or may not provide residential services), and public college operated programs for students with disabilities.

Neither traditional school districts nor choice districts fall within the definition of "receiving schools." Therefore, N.J.A.C. 6A:14-7.7(a) and (b) do not apply to the situation for which the petitioner seeks a remedy. Likewise, the Department does not have the authority to amend N.J.A.C. 6A:14-7.7(a) and (b) to apply the rules for choice student enrollment to receiving schools. The Department also does not have the authority to force a school district to retain a non-resident student with an IEP if the receiving school district seeks to terminate a student's placement.

Therefore, the petitioner's request is denied.