

PUBLIC NOTICE

EDUCATION

STATE BOARD OF EDUCATION

Notice of Action on Petition for Rulemaking

Interdistrict Public School Choice

Scope

N.J.A.C. 6A:12-1.2

Petitioner: Robert Lorfink.

Take notice that on January 12, 2018, 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:12-1.2 to conform the chapter's scope to the Interdistrict Public School Choice Program Act (Act).

The petitioner, who is an attorney, specifically requested the State Board adopt amendments to N.J.A.C. 6A:12-1.2(c), which currently prohibits a district board of education from maintaining at the same time both a tuition program pursuant to N.J.S.A. 18A:38-3 and a choice program in the grade levels that the school district has made available to choice students, and to delete the language restricting the prohibition to only grade levels that are part of the choice program.

The petitioner's request indicated the specific amendments to N.J.A.C. 6A:12-1.2(c) would more closely align the rule to the Act. The petitioner's request stated the current rule expands what the New Jersey Legislature provided in the Act at N.J.S.A. 18A:36B-21.b, which states a choice district shall not be eligible to enroll students on a tuition basis pursuant to N.J.S.A. 18A:38-3 while participating in the choice program.

The petitioner's request also stated the Legislature did not qualify the provision and, instead, required a school district to choose between a choice program and a tuition program.

The petitioner's request further stated N.J.A.C. 6A:12-1.2(c) alters the terms of N.J.S.A. 18A:36B-21.b and, therefore, cannot have any legal effect. The petitioner's request cited *Parsons ex rel. Parsons v. Mullica Twp. Bd. of Educ.*, 226 N.J. 297, 314 (2016) (quoting *Terry v. Harris*, 175 N.J. Super. 482, 496 (Law Div. 1980)) and *N.J. State Chamber of Commerce v. N.J. Elec. Law Enforcement Commission*, 82 N.J. 57, 82 (1980).

N.J.A.C. 6A:12-1.2(c) is not inconsistent with N.J.S.A. 18A:36B-21.b because the choice program was designed to allow participating school districts to define the specific program and grade level(s) that will be part of the choice program and designated as available to choice students. The statute states, in part, that “[a] choice district shall not be eligible to enroll students on a tuition basis pursuant to N.J.S. 18A:38-3 while participating in the interdistrict public school choice program.”

The Department's interpretation in the rules is reasonable because the school(s) or grade(s) in a school district not included in a school district's choice program application, or not approved, are not part of the choice program. Once a program is approved by the Commissioner, choice students are limited to enrollment in the specific grades and programs only. Under the relevant statutory provision at N.J.S.A. 18A:36B-17.a(1), a school district's application to participate in the choice program must include, among other information, a description of programs and schools and the number of student openings in each school identified by grade level that are available for selection.

Throughout the Act, it is the choice program and not the entire school district that is delimited regarding student eligibility. For example, N.J.S.A. 18A:36B-20.b states, in part, “[a]

choice district may evaluate a prospective student on the student's interest in the program offered by a designated school.” Likewise, N.J.S.A. 18A:36B-23 states “[a] choice district shall establish and maintain a parent information center. The center shall collect and disseminate information about participating programs and schools and shall assist parents and guardians in submitting applications for enrollment of students in an appropriate program and school. The information about participating programs and schools shall be posted on the choice district's website.”

This interpretation is consistent with school districts’ application to participate in the choice program and is reflected in the grades and programs that choice districts have designated as choice programs.

For the reasons listed above, the petitioner’s request is hereby denied.