

Public Notice

Education

State Board of Education

Notice of Action on Petition for Rulemaking

School District Operations

Definitions

N.J.A.C. 6A:32-2.1

Petitioner: Jamie Epstein, Esq.

Take notice that on September 23, 2020, the New Jersey State Board of Education (State Board) received a petition for rulemaking from the above petitioner, requesting the State Board amend the definition of “student record” at N.J.A.C. 6A:32-2.1.

The petitioner’s requested an amendment to the definition of “student record” to add, at the end: “‘Student record’ does not include information after it is de-identified and no longer relates to an individual student.”

The petitioner’s request stated the proposed amendment would restore the former interpretation of N.J.A.C. 6A:32-7.5(g) and provide public access to de-identified student records through the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., as urged by the Department of Education (Department) to the New Jersey Supreme Court in *L.R. v. Camden City Public School District*, 238 N.J. 547. N.J.A.C. 6A:32-7.5(g) requires individuals, in complying with N.J.A.C. 6A:32-7.5, to adhere to requirements pursuant to OPRA and 20 U.S.C. § 1232g; 34 CFR Part 99, the Family Educational Rights and Privacy Act (FERPA). N.J.A.C. 6A:32-7.5 governs access to student records, including student health records.

A notice acknowledging receipt of the petition was published in the November 2, 2020, New Jersey Register at 52 N.J.R. 2013(b).

The Department shares the view of the petitioner that N.J.A.C. 6A:32 should be amended to address that the New Jersey Supreme Court held in *L.R. v. Camden City Public School District*, 238 N.J. 547 that existing State regulations do not incorporate the concept of personally identifiable information or include a procedure whereby student records may be disclosed following the redaction of personally identifiable information. The Department intends to amend N.J.A.C. 6A:32. However, the Department has determined that the petitioner's requested amendment is not the most appropriate way to address the issue.

The Department is considering, instead, to amend N.J.A.C. 6A:32 to incorporate definitions at 34 C.F.R. Part 99, which are the Federal regulations that implement the FERPA, 20 U.S.C. 1232g, and N.J.S.A. 18A:36-35. The Department is also considering amendments to clarify that a district board of education may release student records when responding to a request under the OPRA, from any party, after the district board of education has redacted all personally identifiable information and made a reasonable determination that a student's identity is not personally identifiable. The Department expects to present amendments to the State Board within the next six months.

Therefore, the petitioner's request is denied.