

Public Notice

Education

State Board of Education

Notice of Action on Petition for Rulemaking

Special Education

Due Process Hearings

N.J.A.C. 6A:14-2.7

Petitioner: Jamie Epstein, Esq.

Take notice that on October 29, 2020, 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. 6A:14-2.7, which 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.

The petitioner requested amendments at N.J.A.C. 6A:14-2.7(h)4 and 10 to delete references to a 30-day deadline. N.J.A.C. 6A:14-2.7(h)4 requires the Department of Education's (Department) Office of Special Education Policy and Dispute Resolution (Office) to transmit a case to the Office of Administrative Law (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 The Office is required to transmit to the OAL a matter that is not resolved or withdrawn after 30 days from the date the request was received.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's request stated that there is no reason for the Office to not transmit immediately to the OAL a parent's petition upon notice from the parties of an unsuccessful result of the resolution meeting. The petition stated that the existing regulations require the resolution meeting to be held, even if the parent objects, within 15 days of the filing of the parent's petition, but prohibits the parent's request from being transmitted to the OAL until 30 days expires from the date of the request's filing unless the district board of education consents. The petitioner's request maintained that a parent should not have to wait 30 days after filing a request when the resolution meeting failed at least 15 days earlier. The petitioner's request also stated that a district board of education should not be able to unnecessarily delay the parent's right to due process by withholding consent for transmittal until the 30 days expire when the district board of education is permitted to have its petition immediately transmitted to the OAL. The petitioner's request further stated that the procedure for the parent to file a request for transmittal after the failed resolution meeting but before the 30 days expire is fatally flawed because the parent's request is sent to the OAL and cannot be decided before the 30 days expire anyway.

The Federal Individuals with Disabilities Education Act (IDEA), at 20 U.S.C. § 1415 (f)(1)(B)(ii), and its implementing regulations at 20 CFR §300.510(b) provide for a 30-day resolution period prior to the commencement of a due process hearing before an independent hearing officer.

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 to eliminate the 30-day resolution period would result in a conflict between N.J.A.C. 6A:14 and the IDEA and its implementing regulations. Therefore, the petitioner's request is hereby denied.