

Public Notice

Education

State Board of Education

Notice of Receipt of 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 of Education amend the definition of “student record” at N.J.A.C. 6A:32-2.1.

The petitioner seeks to amend the definition 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 states the proposed amendment will 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 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.

The petitioner, who was the attorney for L.R. in the above-cited case, states the request is being made pursuant to N.J.A.C. 1:30-4.1.

Full text of the requested amendment is as follows (additions indicated in boldface **thus**):

Chapter 32, School District Operations

Subchapter 2. Definitions

6A:32-2.1 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise:

...

“Student record” means information related to an individual student gathered within or outside the school district and maintained within the school district, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information that is maintained for the purpose of second-party review is considered a student record. Therefore, information recorded by certified school personnel solely as a memory aid and not for the use of a second party is excluded from this definition. **“Student record” does not include information after it is de-identified and no longer relates to an individual student.**

...

In accordance with N.J.A.C. 1:30-4.2, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.