

## **Public Notice**

### **Education**

#### **State Board of Education**

#### **Notice of Receipt of 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.

When a parent requests a due process hearing or an expedited due process hearing, N.J.A.C. 6A:14-2.7(h) allows a district board of education to resolve a matter through a resolution meeting before proceeding to a due process hearing. The subsection requires the district board of education to conduct a resolution meeting with the parent and the relevant member(s) of the individualized education program (IEP) team who have specific knowledge of the facts identified in the request.

N.J.A.C. 6A:14-2.7(h)4 requires the Office of Special Education Policy and Dispute Resolution (Office) to transmit the 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 The Office is required to transmit, to the OAL, a matter that is not resolved or withdrawn after 30 days from the date the request was received.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 seeks to delete, at N.J.A.C. 6A:14-2.7(h)4 and 10, the references to the 30-day deadlines. The petitioner's request states 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 states 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 contends 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 states 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 states that there is a procedure for the parent to file a request for transmittal after the failed resolution meeting but before the 30 days expire, but contends the procedure is fatally flawed because the parent's request is sent to the OAL and cannot be decided before the 30 days expire anyway.

The petition also states that the Department should amend the regulations as requested because the existing regulations enable the district board of education to unilaterally deprive

parents of their legal right to due process and a free, appropriate public education. The petition further states that the delay of 15 days or more is significant in light of State and Federal laws that require the petitioner to receive a final decision within 75 days of the date of the request's filing.

The petition also states that the Department should consider deleting N.J.A.C. 6A:14-2.7(h)4 altogether.

The petitioner states the request is being made pursuant to N.J.A.C. 1:30-4.1.

**Full text** of the requested amendments is as follows (deletions indicated in brackets [thus]):

## Chapter 14, Special Education

### Subchapter 2. Procedural Safeguards

#### 6A:14-2.7 Due process hearings

(a) – (g) (No change.)

(h) When a parent requests a due process hearing or expedited due process hearing, the district board of education shall have an opportunity through a resolution meeting to resolve the matter before proceeding to a due process hearing. The district board of education shall conduct a resolution meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the request.

1. – 3. (No change.)

4. If a due process hearing request is not resolved to the satisfaction of the parents [within 30 days of the receipt of the petition], the Office shall transmit the case to the Office of Administrative Law for a due process hearing.

5. – 9. (No change.)

10. The parties shall notify the Office, in writing, of the result of the resolution meeting. If the matter has not been resolved or withdrawn, it shall be transmitted to the Office of Administrative Law [after 30 days from the date the request was received].

11. (No change.)

(i) – (w) (No change.)

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.