

# **N.J.A.C. 6A:6, State Board of Education Rulemaking Process**

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## **Chapter 6. State Board of Education Rulemaking Process**

### **Subchapter 1. General Provisions**

#### **6A:6-1.1 Scope**

This chapter sets forth the rulemaking process for the State Board of Education of New Jersey pursuant to Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., as amended under P.L. 2013, c. 259. This chapter also establishes, pursuant to N.J.S.A. 52:14B-4(f), rules that apply to all persons interested in making a petition to adopt a new rule or to amend or repeal an existing rule in Title 6A.

#### **6A:6-1.2 Definitions**

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

"Act" means the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

"Discussion level document" means a draft of a summary memo and rule text to be discussed by the State Board prior to the notice of proposal.

"New Jersey Register" means the journal of New Jersey State agency rulemaking published by the Office of Administrative Law pursuant to N.J.S.A. 52:14B-7(b).

"Notice of adoption" means the document described at N.J.A.C. 1:30-6.1 that must be submitted to the Office of Administrative Law and then published in the New Jersey Register. When it is presented to the State Board at a public meeting, a notice of adoption includes a summary memo and rule text and a comment/response form that contains the Department's responses to comments received during the comment period.

"Notice of proposal" means the document described at N.J.A.C. 1:30-5.1 that must be submitted to the Office of Administrative Law and then published in the New Jersey Register and distributed to the Legislature and interested persons. When it is presented to the State Board at a public meeting, a notice of proposal includes a summary memo and rule text.

"Person" means any individual, association, board, venture, partnership, corporation, organization, institution, and governmental instrumentality recognized by law for any purpose.

"Policy discussion paper" means a paper prepared by Department staff that sets forth the broad policy issues related to a proposed new rule, amendment, or repeal.

"Pre-proposal" means a preliminary proceeding for the purpose of eliciting ideas, views, and comments of interested persons on a contemplated rulemaking proceeding, pursuant to N.J.A.C. 1:30-5.3(b).

"President" means the President of the State Board of Education or, in the President's absence, the Vice President.

"Public hearing" means a legislative-type proceeding that is conducted either as part of a rulemaking or to consider a potential rulemaking and that affords the public an opportunity to present the State Board and/or Department with oral and written comments, arguments, data, and views on the rulemaking or the contemplated rulemaking.

"Public testimony session" means a Department forum at which a panel of State Board members has the opportunity to listen to comments from interested persons regarding new rules, amendments, and/or repeals.

"Rulemaking process" means the systematic process followed by the State Board for the development and promulgation of rules. The process includes activities the State Board deems necessary to develop and promulgate rules, including, but not limited to, activities designed to meet the requirements of the Act and N.J.A.C. 1:30, Rules for Agency Rulemaking.

"Stakeholder" means any individual, group, or association that will be directly impacted by the force and effect of the proposed new rule, amendment, or repeal.

"State Board" means the New Jersey State Board of Education.

"Work session" means a State Board forum, conducted in compliance with the Senator Byron M. Baer Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq., at which the State Board and the Commissioner discuss a policy discussion paper, pre-proposal, or other issues that require an in-depth discussion.

1. The State Board may also take formal action at a work session to vote on an item of action requiring notice to the public pursuant to the OPMA.

## **Subchapter 2. Notice of Anticipated Rulemaking Activity**

### **6A:6-2.1 Notice of State Board meeting dates and rulemaking activity**

- (a) The State Board shall adopt annually by resolution a calendar of meeting dates that include the State Board's public monthly meetings, work sessions, and public testimony sessions. The Department will post the calendar of meeting dates on its [website](http://www.state.nj.us/education/) at <http://www.state.nj.us/education/>. The Department will distribute the calendar of meeting dates to school districts, the news media maintaining a press office to cover the State House Complex, education associations, and other interested persons.
- (b) The State Board shall provide on its monthly public meeting agenda notice of new rules, amendments, or repeals to be discussed or acted upon. In addition, the Department will post on its [website](http://www.state.nj.us/education/) at <http://www.state.nj.us/education/> new rules, amendments, and repeals to be discussed or acted upon by the State Board.
- (c) The Department may publish in the New Jersey Register quarterly calendars of the Department's anticipated proposed rulemaking activities, pursuant to N.J.A.C. 1:30-3. If developed, the calendars shall be amended as necessary in accordance with N.J.A.C. 1:30-3.2.

1. If it is developed, the Department will include a copy of the quarterly rulemaking calendar on the Department's [website](http://www.state.nj.us/education/) at <http://www.state.nj.us/education/>.
2. If it is developed, the Department will provide notice of the availability of its quarterly rulemaking calendar in the same manner as it publicizes its proposed rulemakings pursuant to N.J.A.C. 6A:6-3.1(d) and 1:30-5.2 to inform persons most likely to be affected or interested by the proposed rules.
3. As an alternative to calendar publication requirements under this subsection, the Department may determine to use one of the five calendar exceptions available to it pursuant to N.J.A.C. 1:30-3.

### **Subchapter 3. State Board Rulemaking Process**

#### **6A:6-3.1 State Board rulemaking process**

- (a) The Department may prepare a policy discussion paper and present it to the State Board and to stakeholders for input before documents related to a new rule, amendment, or repeal are presented to the State Board for consideration.
- (b) The Department may develop a discussion level document for any new rule, amendment, or repeal and present it to the State Board. The State Board may decide to:
  1. Place the discussion level document on the State Board's monthly agenda at one or more public meetings in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;
  2. Provide a written comment period of at least 30 days for the discussion level document; and/or
  3. Take oral testimony at one or more public testimony sessions scheduled after the State Board reviews the discussion level document at a public meeting and before the notice of proposal is published in the New Jersey Register pursuant to the Act. The State Board also accepts written comment at this time.

- (c) Based upon the Commissioner's recommendation, the State Board shall determine at a public meeting to publish a notice of proposal in the New Jersey Register to promulgate new rules, amendments, or repeals pursuant to the Act.
1. The State Board may take oral testimony at one or more public testimony sessions scheduled after the proposal is discussed at a public meeting and published in the New Jersey Register.
  2. The State Board may choose to extend the comment period on a notice of proposal.
- (d) The State Board, pursuant to N.J.A.C. 1:30-5.2, will provide additional notice of the proposed rulemaking at least 30 days prior to the close of the comment period using the following methods:
1. The Department will distribute either the notice of proposal, as filed, or a statement of substance of the proposed action to persons who have made timely requests of the State Board for notice of its rulemaking activity and to the Department's electronic mailing list;
  2. The Department will distribute the notice of proposal, as filed, or a statement of the proposed action to the news media maintaining a press office in the State House Complex;
  3. The Department will post the notice of proposal on the Department [website](http://www.state.nj.us/education/) at: <http://www.state.nj.us/education/>;
  4. The Department will distribute the notice of proposal to a list of stakeholders; and
  5. The Department will undertake an additional method of publicity other than publication in the New Jersey Register, pursuant to N.J.A.C. 1:30-5.2, through distribution of a press release to the news media.
- (e) Based upon the Commissioner's recommendation, the State Board shall discuss and vote at a public meeting to publish a notice of adoption in the New Jersey Register to promulgate new rules, amendments, or repeals pursuant to the Act.

(f) The President, in consultation with the Commissioner, may extend for 30 days the comment period on a proposal published in the New Jersey Register. Sufficient public interest for the purposes of extending the comment period, pursuant to N.J.A.C. 1:30-5.4, shall be demonstrated if the President, in consultation with the Commissioner, determines within 30 days of the publication date of the proposal that any of the following criteria has been satisfied:

1. Comments received reveal a previously unrecognized impact on a regulated party;
2. Comments received go beyond the scope of comments previously considered by the State Board during the rulemaking process related to the notice of proposal; or
3. Comments received raise unanticipated issues related to the notice of proposal.

(g) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing, pursuant to N.J.A.C. 1:30-5.5, the President, in consultation with the Commissioner, shall consider the request of an interested person. The request for a public hearing shall be submitted, in writing, within 30 days following the notice of proposal's publication in the New Jersey Register and shall comply with the following requirements:

1. A person interested in a public hearing on a notice of proposal shall submit a request to the State Board Office, New Jersey Department of Education, River View Executive Plaza, Building 100, PO Box 500, Trenton, NJ 08625-0500 or through email to [stateboardoffice@doe.nj.gov](mailto:stateboardoffice@doe.nj.gov). The request for a public hearing shall contain the following information:
  - i. The person's name, address, phone number, and agency of association (if applicable);
  - ii. The citation and title of the proposed rule and the date the notice of proposal was published in the New Jersey Register; and
  - iii. The reasons a public hearing regarding the notice of proposal is considered necessary pursuant to (h) below.

- (h) Sufficient public interest for the purpose of holding a public hearing, pursuant to N.J.A.C. 1:30-5.5, shall be demonstrated if the President, in consultation with the Commissioner and upon review of the request for a public hearing, determines within 45 days of the notice of proposal's publication date that additional data, findings, and/or analysis regarding the notice of proposal are necessary for the State Board to review prior to adoption to ensure the notice of proposal does not violate the intent of the statutory authority.
- (i) A public hearing on a notice of proposal shall be conducted in accordance with N.J.A.C. 1:30-5.5.
  - 1. The Commissioner shall present the hearing officer's recommendations, made pursuant to N.J.A.C. 1:30-5.5(f), at a State Board public meeting, pursuant to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. The State Board shall act upon the Commissioner's recommendation to accept, reject, or modify the hearing officer's recommendations.
  - 2. The hearing officer's recommendations and the State Board's decision to accept, reject, or modify the recommendation(s) shall be summarized and published in the New Jersey Register, pursuant to N.J.A.C. 1:30-5.5(g).
- (j) The Department shall make available on its [website](#) at [www.state.nj.us/education](http://www.state.nj.us/education) all notices of rulemaking activity and public hearing, pursuant to N.J.S.A. 52:14B-3, and shall distribute the notices through its electronic mailing list, pursuant to N.J.S.A. 52:14B-4.

#### **Subchapter 4. Petitions for Rulemaking**

##### **6A:6-4.1 Preparation of rulemaking petition by petitioner**

- (a) An interested person may petition the State Board to adopt a new rule or amend or repeal an existing rule set forth in Title 6A.
- (b) The petitioner shall submit the following information on a Commissioner-prescribed rulemaking petition form:
  - 1. The petitioner's name, mailing and/or e-mail address, and phone number;



2. The substance or nature of the rulemaking request;
  3. The reasons for the request and the petitioner's interest in it; and
  4. References to the agency's authority to take the requested action.
- (c) The petitioner may include as part of the petition the text of the proposed new, amended, or repealed rule.
- (d) The petitioner may submit the rulemaking petition in one of the following ways: by mail to State Board Office, New Jersey Department of Education, River View Executive Plaza, Building 100, PO Box 500, Trenton, NJ 08625-0500; through email to [state-boardoffice@doe.nj.gov](mailto:state-boardoffice@doe.nj.gov); or through the Department's [website](http://www.state.nj.us/education/code/petitions) at [www.state.nj.us/education/code/petitions](http://www.state.nj.us/education/code/petitions).

#### **6A:6-4.2 Department response to a petition for rulemaking**

- (a) The Department will file a notice of petition with the Office of Administrative Law for publication in the New Jersey Register within 15 days of receipt of the rulemaking petition, pursuant to N.J.A.C. 1:30-4.1(c). The notice of petition shall include:
1. The name of the petitioner;
  2. The substance or nature of the requested rulemaking action;
  3. The problem or purpose identified by the petition; and
  4. The date the petition was received.
- (b) The President, in consultation with the Commissioner, shall determine within 60 days of the rulemaking petition's receipt the course of action for responding to the petition, pursuant to N.J.A.C. 1:30-4.2. The course of action shall be to:
1. Deny the petition, in which case the Commissioner shall provide to the petitioner a written statement of the reasons and include the reasons in the notice of action. The President and the Commissioner shall inform the State Board if such an action is taken on a petition;

2. Grant the petition and initiate a rulemaking proceeding within 90 days of granting the petition. The President and the Commissioner shall inform the State Board if such an action is taken on a petition; or
  3. Refer the matter for further deliberations, the nature of which shall be specified to the petitioner and in the notice of action and which shall conclude within 90 days of the referral. Upon conclusion of further deliberations, the President, in consultation with the Commissioner, shall either deny the petition or grant the petition and initiate a rulemaking proceeding within 90 days. The Commissioner shall mail to the petitioner the results of the further deliberations and submit the results to the Office of Administrative Law for publication in the New Jersey Register.
- (c) Within 60 days of receiving the rulemaking petition, the Department shall mail to the petitioner a notice of action on the petition, pursuant to N.J.A.C. 1:30-4.2(b), and shall file it with the Office of Administrative Law for publication in the New Jersey Register. The notice of action shall include:
1. The petitioner's name;
  2. The New Jersey Register citation for the notice of petition;
  3. Certification by the Commissioner that the petition was duly considered pursuant to law; and
  4. The nature or substance of the action upon the petition.
- (d) If the State Board fails to act on the rulemaking petition within the time frames set forth above and in N.J.A.C. 1:30-4.2, the petitioner may request a public hearing by submitting a written request to the Office of Administrative Law, pursuant to N.J.A.C. 1:30-4.3.
- (e) The Department shall make available on its [website](#) at [www.state.nj.us/education](http://www.state.nj.us/education) all petitions for rulemaking received and all notices of action filed, pursuant to N.J.S.A. 52:14B-3.

## **Appendix. State Board of Education Rulemaking Process**

The Department may distribute a policy discussion paper to the State Board and stakeholders.

Feedback to the Commissioner about the policy discussion paper is received from the State Board at a work session and also through written or oral comment from stakeholders.

The State Board considers draft rule language at First Discussion level at a State Board monthly meeting.

The State Board considers draft rule language at Second Discussion level at a State Board monthly meeting.

The State Board may add an additional Discussion level of draft rule language.

A public testimony session is held four to six weeks following First Discussion level consideration of draft rule language. Written comment is also accepted.

The State Board considers the Proposal level rule language at a State Board monthly meeting for its approval to publish the proposal in the New Jersey Register.

The notice of proposal is published in the New Jersey Register.

A 30- or 60-day written comment period is available for the public to react to the published proposal.

A 30-day written comment period is permitted only under rulemaking calendar exceptions located at N.J.A.C. 1:30-3.3(a)1 through 4.

A public testimony session is held four to eight weeks following the Proposal level consideration of rule language.

Adoption level rule language is considered by the State Board for its approval to publish the adoption in the New Jersey Register.

The notice of adoption is published in the New Jersey Register to establish the effective date of the adopted rule.