

NEW JERSEY REGISTER

VOLUME 44, ISSUE 22

ISSUE DATE: NOVEMBER 19, 2012

**EDUCATION**

44 N.J.R. 2966(b)

**STATE BOARD OF EDUCATION**

**Notice of Receipt of Petition for Rulemaking**

**N.J.A.C. 6A:23A-18.5(a)20ii and iii**

Petitioner: Ryan O'Shea.

**Take notice** that on October 8, 2012, the New Jersey State Board of Education received a petition for rulemaking from the above petitioner requesting that the State Board of Education amend the rules pertaining to costs that are non-allowable in the calculation of the certified actual cost per student. Petitioner seeks a new rule or amendments to the end of N.J.A.C. 6A:23A-18.5(a)20ii and iii as noted below (deletion in brackets; additions in boldface), to allow a non-profit approved private school for children with disabilities whose director certifies to the Department of Education at the start of a fiscal year that requiring the school to collect lunch monies from its students would interfere with the school's educational mission shall have its costs of meals as an allowed expense and shall not be required to seek school board resolutions from its contracting districts.

“20. The cost of meals:

- i. For students when the meals do not meet the nutritional requirements of the Child Nutrition Program as administered by the New Jersey Department of Agriculture;
- ii. Effective July 1, 2007 for students when a non-profit approved private school for students with disabilities has not applied for and received funding from the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district

board of education does not require the private school to apply for and receive funding from the Child Nutrition Program (CNP); **a nonprofit approved private school for children with disabilities whose director certifies to the Department of Education at the start of a fiscal year that requiring the school to collect lunch monies from its students would interfere with the school's educational mission shall have its costs of meals as an allowed expense and shall not be required to seek school board resolutions from its contracting districts.**

- iii. Effective July 1, 2007 for students when the approved private school for students with disabilities has not charged students for paid and reduced meals in accordance with the income eligibility criteria established by the Child Nutrition Program as administered by the New Jersey Department of Agriculture except when the private school has received, on an annual basis prior to the start of the fiscal year, school board resolutions from a majority of the school districts that have contracted to send students to the private school in that fiscal year, which resolves the district board of education does not require the private school to charge students for a reduced and/or paid meal[; and]. **A nonprofit approved private school for children with disabilities whose director certifies to the Department of Education at the start of a fiscal year that requiring the school to collect lunch monies from its students would interfere with the school's educational mission shall have its costs of meals as an allowed expense and shall not be required to seek school board resolutions from its contracting districts; and**
- iv. For staff except as allowable in accordance with N.J.A.C. 6A:23A-18.5(a)18;”

The petitioner states that in 2007, the rules were enacted in a fashion that gave the affected schools little notice and the Department did not undertake an effective process to educate contracting districts. The petitioner also states that this resulted in a great waste of time and efforts at such private schools, needless friction and concern at contracting districts, and unfair disallowances of meal costs for the schools, putting them at financial risk. The petitioner further states that leaving the decision making to a majority of contracting boards makes it a paper pushing or merely economic issue but for private schools such as those with disabled children it needs to be based on what is best for the children.

The petitioner also states that if the school were required to collect the meal moneys from its disabled children unneeded time from classroom work would occur, the likelihood of disputes with staff and students would increase, and having the disabled students, many with emotional problems, carrying money to school on their busses and having it on them during the school day would lead to disciplinary issues like theft, strong arm “loans,” gambling, intimidation, and physical altercations.

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