

Public Notice

Education

State Board of Education

Notice of Receipt of Petition for Rulemaking

Special Education

Fiscal Accountability, Efficiency, and Budgeting Procedures

Student Transportation

School District Operations

Student Records

N.J.A.C. 6A:14-3.7; 6A:23A-3.1, 5.2, 6.4, 6.6, 6.9, and 8.2; 6A:27-7.9; and 6A:32-3.2, 7.3, 7.4, 7.5, 7.8, and 7.9

Petitioner: Robert J. Chester, Esq.

Take notice that on August 28, 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 or add new rules at N.J.A.C. 6A:14, 23A, 27, and 32, related to student records. As the petition originally filed lacked the specific amendments and new rules sought, the petitioner provided the amendments and new rules on September 1, 2020.

The petitioner seeks amendments and new rules related to how school districts maintain student records, what constitutes student records, and how student records are redacted and made available under the Open Public Records Act (OPRA) (N.J.S.A. 47:1A-1 et seq.). The petitioner also seeks other requirements related to security of student records, data breaches, individualized education program (IEP) meetings, and school buses. The petitioner further seeks to add

provisions related to district board of education members asserting the educational rights of their children.

The petitioner states the request is being made pursuant to N.J.A.C. 1:30-4.1, OPRA, the New Jersey's Pupil Records Act (N.J.S.A. 18A:36-19) and its implementing rules, as well as in accordance with *L.R. v. Camden City Public School District* (A-61/62-17) (080333), Argued January 28, 2019 -- Decided July 17, 2019. The petitioner also states that the New Jersey Supreme Court ruled in *L.R. v. Camden City Public School District* that "student records" include any record or communication, beyond a Post-It memory aid, that is intended for, or could be, published to, another, individually or collectively, that refers to the student, no matter the medium stored. The petitioner further states that the New Jersey Supreme Court made clear that rules under the Pupil Record Act need clarification.

The petitioner states that the Pupil Records Act was enacted and amended in a time before data security and data access concerns. The petitioner also states that *L.R. v. Camden City Public Schools* showed the dilemma of independent organizations trying to conduct oversight when local education agencies (LEAs) tend to avoid scrutiny into special education, which leaves the most vulnerable students without the protections of organizations like Disability Rights New Jersey to do socioeconomic analysis on special education practices. The petitioner further states that *L.R. v. Camden City Public Schools* pointed out there is a need for independent researchers to be able to look at redacted student records to find out where defects in educational processes are occurring. The petitioner also states that the new European Data Protection Laws highlights the need for security and knowledge of data.

The petitioner contends that the underlying premise must continue to be that parents and students “own” their data, and that schools are mere caretakers of that data and hold an exceptionally high standard of care to that data.

The petitioner’s stated interest in the matter is ensuring parents are not hindered by LEAs attempting to exclude and redact relevant student records that may cause the LEAs’ embarrassment. The petitioner also stated that it should not take litigation or great cost for parents to get a copy of their child’s complete student records. The petitioner further stated that parents of students with disabilities need equal access to records and communications to be an equal part of their child’s child study team, and parents of general education students need access to the same records to equally partner with their child’s teachers.

The petitioner specifically requests a new regulation at N.J.A.C. 6A:14-3.7(n) to require all IEP meetings to be recorded and for the recording to be maintained as part of the student’s record. The new regulation also would require a school district to provide the student’s parent(s) and/or guardian(s) with a written transcript of all relevant IEP meetings at no charge in the event of a due process or other dispute.

The petitioner also requests new regulations at N.J.A.C. 6A:23A-3.1(g), 6.4(c), 6.6(d), and 6.9(b) to require the following to be posted on a school district’s website: employment contracts and proposed contracts, invoices to be paid, current and future standard operating procedure manuals, and work orders.

The petitioner further requests amendments at N.J.A.C. 6A:23A-5.2(a), which requires a district board of education to establish by policy a strategy to minimize the cost of public relations and professional services. The rule also sets forth the policy’s required elements. The petitioner seeks to require the district board of education policy to require the following to be

posted prominently on the school district's website: professional services and public relations contracts; requests for proposals; proposals submitted, including ones not selected, after being decided on by the district board of education; billing invoices within seven business days of receipt; monthly attorney cost summaries broken down by categories (special education, labor, etc.); and documents from legal action in which the school district is involved.

The petitioner also requests an amendment at N.J.A.C. 6A:23A-8.2(a), which requires each district board of education to make available upon request for public inspection all budget and supporting documentation contained in the budget application and all other documents listed at N.J.A.C. 6A:23A-8.1 once the budget application has been submitted to the executive county superintendent for approval. The petitioner seeks to also require the budget and supporting documents to be posted on the school district's website.

The petitioner requests amendments at N.J.A.C. 6A:27-7.9, which requires school bus owners to retain all records of inspection and maintenance reports for the life of the vehicle. The section further requires such records to be available for review by the New Jersey Motor Vehicle Commission. The petitioner seeks an amendment to also require the records shall be posted on the school district's website and discoverable under OPRA. The petitioner also requests a new regulation at N.J.A.C. 6A:27-7.9(b) to require all school buses to have an OBD-II/GPS tracker, front-facing video, and student-facing video with audio. The petitioner seeks a new regulation at N.J.A.C. 6A:27-7.9(c) to require school districts to use fleet-management software to identify and list all unsafe driving, including all violations of traffic laws. The petitioner further requests new N.J.A.C. 6A:27-7.9(d) and (e) to require school districts to post on their websites the safety reports listing all such unsafe driving and traffic violations for each school bus and school bus driver, as well as all complaints regarding school buses and school bus drivers. New N.J.A.C.

6A:27-7.9(d) and (e) would also require the safety reports and complaints to be discoverable under OPRA.

The petitioner stated that OBD-II/GPS and fleet management software show where a school bus driver has been driving unsafely. The petitioner also stated that parents have the right to know if their child is being driven safely to school and should be able to see the front-facing video. The petitioner also stated that parents should never have to deal with bad school bus drivers.

The petitioner requests a new regulation at N.J.A.C. 6A:32-3.2(c) to prohibit any member of a district board of education from being penalized in any way for asserting the educational rights of his or her child. The requested rule also states that the district board of education member shall not be forced to step down from the district board of education for asserting such rights, including in due process and or other proceedings of a similar nature. The new regulation would also require the district board of education member to recuse himself or herself as a district board of education member from any matter specifically involving his or her child. The petitioner states that, absent the new regulation, the children of district board of education members do not have the same right to protect the quality of their education.

The petitioner also requests amendments at N.J.A.C. 6A:32-7.3(a), which sets forth mandated student records. The requested amendments would add the following as mandated student records as they relate to a student, whether individually and/or collectively:

- Email, texts, and other communications by teachers, administrators, and staff on their own personal devices and on their individual social media posts;
- Email, texts, and other communications by teachers, administrators, and staff, including the metadata;

- Social media posts by the school district individually and/or collectively;
- Press releases;
- Awards and other recognitions;
- Audio recordings, as well as video recordings with or without sound, including metadata (band concerts, school plays, security video, etc.);
- Class lists, including students, teachers, and aides;
- Pictures and school pictures;
- Parent communication books and parent communication in apps;
- All data in class management systems such as Google Classroom;
- Student disciplinary records; and
- All other such records that individually and/or collectively involve the student and are anything more than a memory aid.

The requested amendments also would include the following as mandated records:

- Student recorded audio or video, when shared with the LEA or other authority.
No student can be punished in any way, nor retaliated against, for recording and/or sharing and/or reporting any video or audio of any situation which they reasonably perceive to be a health or safety issue and/or a violation of any Federal, State, or local law, regulation, or other authority;
- All safety and maintenance reports for the individual bus(es) that a student rides.
A report of such will be sent to the parents monthly for the buses their children ride. Each school bus will be required to record OBD-II and GPS data, which will be publicly available under OPRA.

- Yearbooks will be posted on the school’s website, so that students who cannot afford to buy a physical yearbook will have access to the electronic version;
- All special education classrooms at a minimum must have at least a 1080p or better resolution camera with audio on each wall aimed at the students, all feeds and records available to parents of those students remotely; and
- All regular education classrooms must have at a minimum a 1080p or better resolution camera with audio aimed at the teacher and blackboard, available to all students sick at home, and parents of all students in the class remotely.

The petitioner requests an amendment at N.J.A.C. 6A:32-7.4(b), which allows school districts to store all documents either electronically or in paper format. The petitioner seeks to replace “either electronically or in paper format” with “in electronic format unless not feasible.” The petitioner also requests an amendment at N.J.A.C. 6A:32-7.4(b)1, which requires proper security and backup procedures to be administered when records are stored electronically. The requester seeks to add the statement that parents will annually be informed of all classes of student records held by the LEA and where they are stored.

The petitioner requests an amendment at N.J.A.C. 6A:32-7.4(c), which requires student health records, whether stored on paper or electronically, to be maintained separately from other student records, until such time as graduation or termination whereupon the health history and immunization record must be removed from the student’s health record and placed in the student’s mandated record. The petitioner seeks to replace “whether stored on paper or electronically” with “will be stored electronically and.”

The petitioner requests an amendment at N.J.A.C. 6A:32-7.4(d), which requires records to be accessible during the hours in which the school program is in operation. The petitioner seeks to add: “Records will also be available on the parent portal of the LEA’s website.”

The petitioner also seeks the following new regulations at N.J.A.C. 6A:32-7.4(g) through (k):

- A student’s family will be promptly notified of any data breach involving data held by the LEA, and be informed in writing of any classes of data breached, as well as any individual documents or information specifically involving their child;
- Each LEA shall establish a parent portal where as many records as possible about their children are stored;
- LEAs shall yearly and upon request disclose what classes of student records they maintain, as well as where they are maintained (that is, iepdirect, cloud provider, etc.);
- LEAs shall maintain adequate insurance to cover data security issues; and
- The Commissioner will audit yearly each LEA for data safety, and will directly inform parents, guardians, and students over 18 of the data safety and security audit results.

The petitioner requests an amendment at N.J.A.C. 6A:32-7.5(c), which allows the district board of education to charge a reasonable fee for reproduction of student records, not to exceed the schedule of costs set forth at N.J.S.A. 47:1A-5, provided that the cost does not effectively prevent the parents or adult students from exercising their rights pursuant to N.J.A.C. 6A:32-7 or other Federal and State rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14. The petitioner seeks to add a provision to prohibit the assessment of charges for

“special service costs,” electronic records, or redactions costs. The proposed amendment would allow for the assessment of the actual cost of media and for parents to provide storage media for use to avoid cost. The requested amendment also would prohibit any charge from being assessed to anyone receiving free or reduced-price lunch, or any other form of governmental assistance.

The petitioner also requests an amendment at N.J.A.C. 6A:32-7.5(d), which requires access to, and disclosure of, a student health record to meet the requirements of the Family Education Rights and Privacy Act, 34 CFR Part 99 (FERPA). The petitioner seeks to add “and the New Jersey Pupil Record Act, as amended” at the end of the regulation.

The petitioner requests an amendment at N.J.A.C. 6A:32-7.8(e), which requires the New Jersey public school district of last enrollment, graduation, or permanent departure of the student from the school district to keep for 100 years a mandated record of a student’s name, date of birth, name of parents, gender, health history and immunization, standardized assessment results, grades, attendance, classes attended, grade level completed, year completed, and years of attendance. The petitioner seeks, instead, to require the school district to keep for 100 years “all student records electronically.” The petitioner states that valuable historical information, as well as information a student may need later in life, are destroyed when student records are destroyed, as they used to be. The petitioner also states that, at the student’s death, the records and their access need to belong to the student’s estate.

The petitioner further seeks a new section at N.J.A.C. 6A:32-7.9 titled “Redaction to student records.” Pursuant to requested N.J.A.C. 6A:32-7.9(a), each individual redaction must be individually labeled as to under what specific authority it is being redacted, and the State Board will list all authorized redaction reasons.

Requested N.J.A.C. 6A:32-7.9(b) would allow parents, guardians, and students to petition the Office of Special Education Programs and/or the New Jersey Department of Education for the appointment of a special master at no cost to review each challenged redaction for its correctness within 30 days of such request. The rule sought also would require the special master to ensure that the parents, guardians, and students receive a corrected electronic copy at no additional cost.

Requested N.J.A.C. 6A:32-7.9(c) would require all redactions for claims of privilege to be approved in advance by the New Jersey Department of Education. The rule sought also would prohibit the “To,” “From,” “Cc,” “Bcc,” and “Subject” fields and metadata from being redacted unless absolutely necessary.

The petitioner stated that, in his experience, LEAs tend to be evasive with OPRA requests. The petitioner also stated that it should be the State Board of Education’s responsibility to make things easy for requestors to avoid the need for expensive litigation to compel records and for making sure only legitimate redactions are made, and as little as possible. The petitioner further stated that the solution is to have a special master appointed by the Department of Education who is independent of the school district.

Full text of the requested amendments and new rules are as follows (additions in boldface **thus**; deletions in brackets [thus]):

Chapter 14, Special Education

Subchapter 3. Services

6A:14-3.7 Individualized education program

(a) – (m) (No change.)

- (n) **All IEP meetings will be recorded and such recording will be maintained as part of the student record. In the event of a due process or other dispute, the district will provide the parents and/or guardian a written transcript of all relevant IEP meetings at no charge.**

Chapter 23A, Fiscal Accountability, Efficiency, and Budgeting Procedures

Subchapter 3. Administrator and District Board of Education Member Accountability

6A:23A-3.1 Review of employment contracts for superintendents, assistant superintendents, and school business administrators

(a) - (f) (No change.)

- (g) **All employment contracts and proposed contracts shall be prominently posted on the district's website.**

Subchapter 5. Additional Measures to Ensure Effective and Efficient Expenditures of District Funds

6A:23A-5.2 Public relations and professional services; district board of education policies; efficiency

- (a) Each district board of education of a school district and CVSD shall establish by policy(ies) a strategy(ies) to minimize the cost of public relations as defined in N.J.A.C. 6A:23A-9.3(c), and professional services. The policy(ies) shall include, to the extent practical and cost effective, but need not be limited to, the following provisions:

1. – 6. (No change.)

7. **All professional services contracts and public relations contracts shall be prominently posted on the district's website.**
8. **All requests for proposals will be prominently posted on the district's website.**
9. **All proposals submitted, including ones not selected, will be prominently posted on the district's website after being decided on by the district board of education.**
10. **All billing invoices will be prominently posted on the district's website within seven business days of receipt, redacted for student's personal information.**
11. **Each month, the district will post on its website attorney cost summaries broken down by categories (special education, labor, etc.).**
12. **All documents from legal action that the district is involved in shall be prominently posted on the district's website, redacted for student personal information.**

(b)-(f) (No change.)

Subchapter 6. Conditions for The Receipt of State Aid

6A:23A-6.4 Internal controls

(a) – (b) (No change.)

(c) **All invoices to be paid will be prominently posted on the district's website.**

6A:23A-6.6 Standard operating procedures for business functions

(a) – (c) (No change.)

- (d) **Each school district will post its current and future standard operating procedure manuals prominently on the district’s website.**

6A:23A-6.9 Facilities maintenance and repair scheduling and accounting

- (a) (No change.)
- (b) **All work orders will be prominently posted on the district’s website.**

Subchapter 8. Annual Budget Development and Submission

6A:23A-8.2 Public notice and inspection

- (a) Each district board of education, upon submission of its budget application to the executive county superintendent or by the statutory submission date, whichever is earlier, shall make available upon request for public inspection **and post on the district’s website** all budget and supporting documentation contained in the budget application and all other documents listed in N.J.A.C. 6A:23A-8.1 once the budget application has been submitted to the executive county superintendent for approval. Nothing in this section shall restrict access by the citizens of this State to documents that otherwise qualify as public records pursuant to N.J.S.A. 47:1A-1 et seq., or under the common law.
- (b) – (c) (No change.)

Chapter 27, Student Transportation

Subchapter 7. Vehicle Use and Standards

6A:27-7.9 Vehicle records

- (a) School bus owners shall retain all records of inspection and maintenance reports for the life of the vehicle. Such records shall be available for review by the New Jersey Motor Vehicle Commission. **All such records shall be posted on the district's website and discoverable under the Open Public Records Act (OPRA) (N.J.S.A. 47:1A-1 et seq.).**
- (b) **All school buses shall have the following features: OBD-II/GPS tracker, front-facing video, and student-facing video with audio.**
- (c) **Districts shall use fleet-management software to identify and list all unsafe driving, including all violations of traffic laws.**
- (d) **Districts shall post the safety reports listing all such unsafe driving and traffic violations for each school bus and school bus driver on their district's website. All such safety and maintenance reports will be discoverable under OPRA.**
- (e) **Districts shall post all complaints regarding school buses and school bus drivers on their district's website, with redacted personal information. All such complaints and all correspondence and documents regarding them will be discoverable under OPRA.**

Chapter 32, School District Operations

Subchapter 3. District Boards of Education – General

6A:32-3.2 Requirements for the code of ethics for district board of education members and charter school board of trustees members

- (a) – (b) (No change.)
- (c) **No member of a district board of education shall be penalized in any way for asserting the educational rights of his or her child. The district board of education**

member shall not be forced to step down from the district board of education for asserting such rights, including in due process and/or other proceedings of a similar nature. In any matter specifically involving his or her child, the district board of education member will recuse himself or herself from that matter as a district board of education member.

Subchapter 7. Student Records

6A:32-7.3 Mandated student records

- (a) Mandated student records shall include the following:
1. – 4. (No change.)
 5. Records pursuant to rules and regulations regarding the education of students with disabilities; [and]
 6. All other records required by N.J.A.C. 6A[.];
 7. **Email, texts, and other communications by teachers, administrators, and staff on their own personal devices and on their individual social media posts regarding the student, whether individually and/or collectively;**
 8. **Social media posts by the district individually and/or collectively involving the student;**
 9. **Press releases involving the student, individually and/or collectively;**
 10. **Awards and other recognitions involving the student, individually and/or collectively;**
 11. **Audio recordings of the student, individually and/or collectively;**

- 12. Video recordings of the student, individually and/or collectively; with or without sound, including metadata (band concerts, school plays, security video, etc.);**
- 13. Email, texts, and other communications by teachers, administrators, and staff regarding the student, whether individually and/or collectively, including the metadata;**
- 14. Class lists, including students, teachers, and aides;**
- 15. Student recorded audio or video, when shared with the local education agency (LEA) or other authority. No student can be punished in any way nor retaliated against for recording and/or sharing and/or reporting any video or audio of any situation, which they reasonably perceive to be a health or safety issue and/or a violation of any Federal, State, or local law, regulation, or other authority;**
- 16. All safety and maintenance reports for the individual bus(es) that a student rides. A report of such will be sent to the parents monthly for the buses their children ride. Each school bus will be required to record OBD-II and GPS data, which will be publicly available under the Open Public Records Act (OPRA) (N.J.S.A. 47:1A-1 et seq.).**
- 17. Yearbooks will be posted on the school's website, so that students who cannot afford to buy a physical yearbook will have access to the electronic version;**
- 18. School pictures;**
- 19. Pictures of the student;**
- 20. Parent communication books;**

21. All special education classrooms, at a minimum, must have at least a 1080p or better resolution camera with audio on each wall aimed at the students, all feeds and records available to parents of those students remotely;
22. All regular education classrooms must have, at a minimum, a 1080p or better resolution camera with audio aimed at the teacher and blackboard, available to all students sick at home, and parents of all students in the class remotely;
23. Parent communication in apps;
24. All data in class management systems such as Google Classroom;
25. Student disciplinary records; and
26. All other such records that individually and/or collectively involve the student and are anything more than a memory aid.

6A:32-7.4 Maintenance and security of student records

- (a) (No change.)
- (b) School districts may store all documents [either electronically or in paper format] **in electronic format unless not feasible.**
 1. When records are stored electronically, proper security and backup procedures shall be administered. **Parents will annually be informed of all classes of student records held by the local education agency (LEA) and where they are stored.**
- (c) Student health records[, whether stored on paper or electronically,] **will be stored electronically and** shall be maintained separately from other student records, until such time as graduation or termination whereupon the health history and immunization record

shall be removed from the student's health record and placed in the student's mandated record.

- (d) Records shall be accessible during the hours in which the school program is in operation.

Records will also be available on the parent portal of the LEA's website.

- (e) – (f) (No change.)

- (g) **A student's family will be promptly notified of any data breach involving data held by the LEA, and be informed in writing of any classes of data breached, as well as any individual documents or information specifically involving their child.**

- (h) **Each LEA shall establish a parent portal where as many records as possible about their children are stored**

- (i) **LEAs shall yearly and upon request disclose what classes of student records they maintain, as well as where they are maintained (that is, iepdirect, cloud provider, etc.).**

- (j) **LEAs shall maintain adequate insurance to cover data security issues.**

- (k) **The Commissioner will audit yearly each LEA for data safety, and will directly inform parents, guardians, and students over 18 of the data safety and security audit results.**

6A:32-7.5 Access to student records

- (a) – (b) (No change.)

- (c) The district board of education may charge a reasonable fee for reproduction of student records, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-5, provided that the cost does not effectively prevent the parents or adult students from exercising their rights under this subchapter or other Federal and State rules and regulations regarding

students with disabilities, including N.J.A.C. 6A:14. **No charge may be assessed for “special service costs” nor electronic records, but for the actual cost of media. No charge may be assessed for redaction costs. Parents may provide storage media for use to avoid cost. No charge may be assessed to anyone receiving free or reduced-price lunch, nor any other form of governmental assistance.**

(d) Access to and disclosure of a student health record shall meet the requirements of the Family Education Rights and Privacy Act, 34 C.F.R. Part 99 (FERPA) **and the New Jersey Pupil Record Act, as amended.**

(e) – (g) (No change.)

6A:32-7.8 Retention and disposal of student records

(a) – (d) (No change.)

(e) The New Jersey public school district of last enrollment, graduation, or permanent departure of the student from the school district shall keep for 100 years [a mandated record of a student’s name, date of birth, name of parents, gender, health history and immunization, standardized assessment results, grades, attendance, classes attended, grade level completed, year completed, and years of attendance] **all student records electronically.**

6A:32-7.9 Redaction of student records

(a) **Each individual redaction must be individually labeled as to under what specific authority it is being redacted. The State Board will list all authorized redaction reasons.**

- (b) Parents, guardians, and students may petition the Office of Special Education Programs and/or the New Jersey Department of Education for the appointment of a special master at no cost to them to review each challenged redaction for its correctness within 30 days of such request, and the special master shall ensure that the parents, guardians, and students receive a corrected electronic copy at no additional cost to them.**
- (c) All redactions for claims of privilege must be approved in advance by the New Jersey Department of Education. To, From, Cc, Bcc, Subject, and metadata shall not be redacted unless absolutely necessary.**

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.