

Public Notice

Education

State Board of Education

Notice of Action on Petition for Rulemaking

School District Operations

Access to Student Records

N.J.A.C. 6A:32-7.5

Petitioner: Jamie Epstein, Esq.

Take notice that on June 8, 2022, 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 N.J.A.C. 6A:32-7.5(c) to limit the type of costs that a school district can charge for student records.

On June 1, 2022, amendments at N.J.A.C. 6A:32-7.5 that recodified N.J.A.C. 6A:32-7.5(c) as new N.J.A.C. 6A:32-7.5(b) and made technical changes to the rule were adopted by the State Board of Education and became effective upon publication in the New Jersey Register on July 5, 2022 (see 54 N.J.R. 1276(a)).

The petitioner sought to amend N.J.A.C. 6A:32-7.5(b), 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, which is part of the Open Public Records Act (OPRA), provided that the cost does not effectively prevent parents or adult students from exercising their rights pursuant to N.J.A.C. 6A:32-7, Student Records, or other Federal and State rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14. The petitioner sought to add “copying” before “cost” and to change the statutory cross-reference to N.J.S.A. 47:1A-5.b(1).

A notice acknowledging receipt of the petition was published in the July 18, 2022, New Jersey Register at 54 N.J.R. 1439(b).

The petitioner's request stated that N.J.S.A. 47:1A-5.b allows public entities to charge requestors for the copying of records, but N.J.S.A. 47:1A-5.c and d allow a special service charge for the reproduction of records. The petitioner also stated that the Federal Family Educational Rights and Privacy Act (FERPA) at 34 CFR 99.11(a) allows a reasonable copying fee to be charged when parents or students request student records, but 34 CFR 99.11(b) prohibits a special services fee for the search for, and retrieval of, student records from being charged to parents or students.

The petitioner also stated that [guidance on student privacy](#) issued by the United States Department of Education interprets 34 CFR 99.11(a) and (b) as prohibiting "the costs, if any, to the school of redacting, or segregating, education records of multiple students as being like the costs of search and retrieval that may not be charged to parents or eligible students."

The petition further stated that N.J.A.C. 6A:32-7.5(b) allows local education agencies to charge students and parents a special service charge, pursuant to N.J.S.A. 47:1A-5.c and d, and that it violates 34 CFR 99.11(b). The petitioner stated that the New Jersey Pupil Records Act (NJPRA) is currently in conflict with FERPA by restricting the Federal civil rights of students and parents to access their records, which the petition states is a violation of the Supremacy Clause. U.S. Const. Art. VI, cl. 2. The petition contended that the requested amendments at N.J.A.C. 6A:32-7.5(b) would harmonize the NJPRA with the FERPA.

The Department of Education (Department) maintains the amendments at N.J.A.C. 6A:32-7.5 that took effect on July 5, 2022, address requests submitted pursuant to OPRA. Consistent with N.J.A.C. 6A:32-7.5(g), school districts must comply with the requirements of both OPRA and FERPA.

The Department also maintains that the costs for records are already set forth at N.J.S.A. 47:1A-5. The Department further contends that limiting school district charges to only copying costs, and not allowing costs associated with redactions or special services, would be an unfunded mandate. Preparing and redacting records uses staff time, which incurs a cost for school districts.

Furthermore, N.J.A.C. 6A:32-7.5(b) allows a district board of education to not charge for the reproduction of a student record in instances when the cost may prevent a parent or adult student from accessing the record.

Therefore, the petitioner's request is denied.