

Public Notice

Education

State Board Of Education

Notice of Receipt of 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 parents or adult students 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 are expected to become effective upon publication.

The petitioner seeks 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, 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 seeks to add “copying” before “cost” and to change the statutory cross-reference to N.J.S.A. 47:1A-5.b(1), which is part of the Open Public Records Act (OPRA).

The petitioner's request states 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 petition also states 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 petition also states 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 also states 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 petition further states 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 contends that the requested amendments at N.J.A.C. 6A:32-7.5(b) will harmonize the NJPRA with the FERPA.

Full text of the requested amendments is as follows (additions indicated in boldface **thus**):

Subchapter 7. Student Records

6A:32-7.5 Access to student records

- (a) (No change.)

- (b) The district board of education may charge a reasonable fee for reproduction of student records, not to exceed the schedule of **copying** costs set forth at N.J.S.A. 47:1A-5.**b(1)**, provided that the cost does not effectively prevent 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.
- (c) – (g) (No change.)

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