

Public Notice

Education

State Board of Education

Notice of Action on Petitions for Rulemaking

School District Operations

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

Petitioner: Robert J. Chester, Esq.

Take notice that on October 6 and 8, 2021, the New Jersey State Board of Education (State Board) received two petitions for rulemaking from the above petitioner, requesting the State Board of Education amend N.J.A.C. 6A:32-7.5 and add new rules at N.J.A.C. 6A:32-16. As the first petition originally filed lacked the specific amendments sought, the petitioner provided additional information on October 7, 2021.

A notice acknowledging receipt of the petitions was published in the November 15, 2021, New Jersey Register at 53 N.J.R. 1862(a).

The petitioner sought an amendment at existing 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 parents or adult students from exercising their rights at 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 sought to harmonize the cost structure with the principles the Legislature used with New Jersey's Open Public Records Act (OPRA). The petitioner stated that the Legislature viewed the costs of searching and compiling records as something that should not be charged for, and viewed electronic documents and files to have no charge, save any

reimbursement for media. The petitioner provided the Government Records Council's [webpage](#) on fees when asked to provide the specific amendment sought.

Existing N.J.A.C. 6A:32-7.5(c) states the district board of education may 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 under this subchapter or other Federal and State rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14. Therefore, the cost structure set forth in the existing rule is already aligned with OPRA.

The existing rule also allows a district board of education to not charge for the reproduction of a student record if the cost may prevent a parent or adult student from accessing the record. Requiring district boards of education to provide records without the ability to charge for redactions or other special services costs would be an unfunded mandate because staff time is required to prepare and review records for necessary redactions to ensure student confidentiality and compliance with OPRA. This process uses staff time and is a cost to school districts.

The petitioner also requested new rules at N.J.A.C. 6A:32-16, Educational Technology, to establish rules about spyware, monitoring technology, and academic freedom. The requested new rules would require local education agencies (LEAs) to notify student users and their parents in writing annually and upon issuance of any technology that is issued to the student, and/or used by the student, to monitor their use of the technologies, with the exact capabilities of such monitoring technologies. The requested new rules also would require LEAs to notify student technology users and their parents each time a monitoring capability is used by them. The requested new rules further would prohibit LEAs from using any technology from any vendor,

manufacturer, and/or company that censors speech in any form in any product and/or service they offer, even ones not used by the LEA, including viewpoint discrimination.

The petitioner stated that the new rules at N.J.A.C. 6A:32-16 are necessary because the COVID-19 pandemic highlighted problems in schools, such as an equity gap where well-off students use their own technologies, yet students who are less well-off are forced to use school technologies and are spied on and manipulated.

School districts are responsible for choosing the most effective and appropriate technology for use by their students and the Department cannot determine for school districts the parameters of acceptable technology. School districts also have the authority and responsibility to create policies and procedures for the safe use of district-owned equipment and services but do not have the authority to monitor student use on student's personal devices. Furthermore, the Department has determined that the requested new rules at N.J.A.C. 6A:32-16 pose serious privacy concerns.

For all of the reasons stated above, the petitioner's requests are hereby denied.