

Public Notice

Education

State Board of Education

Notice of Action on Petitions for Rulemaking

Parental Consent, Notice, Participation, and Meetings

Individualized Education Program

Special Education

N.J.A.C. 6A:14-2.3 and 3.7

Petitioner: Robert J. Chester, Esq.

Take notice that on October 6, 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:14-2.3 and 3.7. The petitioner requested amendments to the sections that govern parental consent for special education and related services provided to students with disabilities and the development and implementation of students with disabilities' individualized education programs (IEPs).

A notice acknowledging receipt of the petitions was published in the November 15, 2021, New Jersey Register at 53 N.J.R. 1930(a).

The petitioner sought to amend N.J.A.C. 6A:14-2.3(a)1, which requires parental consent to be obtained prior to implementation of the initial IEP resulting from an initial evaluation. The petitioner sought to also require parental consent to also be obtained prior to implementation of all subsequent IEPs.

The petitioner sought to amend N.J.A.C. 6A:14-3.7 to require all IEP goals to include all core curricular goals and subgoals (including taxonomy), as well as the specific steps to either

reach the goals and/or steps to reach intermediate goals. The petitioner stated that the State's core curricular goals and subgoals are the appropriate New Jersey Student Learning Standards (NJSLS) and that every IEP should be required to include the NJSLS for physical education, visual and performing arts, world language, library, and technology goals, subgoals (with taxonomy), and all steps to get there. The petitioner stated that the request would align the rules governing IEPs with the United States Department of Education's 2015 guidance clarifying that an IEP must be aligned with State academic content standards for the grade in which the student is enrolled.

The Individuals with Disabilities in Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., is the Federal law that governs the education of students with disabilities. To receive Federal special education funding, states are required to develop special education laws and regulations that are consistent with the IDEA and its implementing regulations, 34 CFR Part 300. N.J.A.C. 6A:14, Special Education, satisfies this directive.

N.J.A.C. 6A:14-2.3(a)2 requires parental consent prior to the implementation of a student's initial IEP. Once a student's services have begun, a parent or school district may propose changes to a student's program or placement through the IEP process. The school district must provide the student's parent with written notice of the proposed change(s) and allow 15 days for the student's parent to consider the proposed change(s) prior to implementation. Parental consent for implementation of a proposed change(s) is not required, which is consistent with the requirements of the IDEA's implementing regulations at 34 CFR 300.300(b). The regulations contain multiple procedural safeguards that encourage full parental participation in IEP meetings and detailed written notice prior to any proposed action. If a parent disagrees with

the action being proposed by the school district, the parent may utilize the available dispute resolution options.

Requiring parental consent prior to the implementation of every change to an IEP would be unduly burdensome for all parties. Moreover, the IDEA does not allow a school district to request a due process hearing regarding a disagreement about education placement. Therefore, requiring parental consent prior to any proposed amendment to an IEP would circumvent a school district's ability to advance a program that the school district has determined to be appropriate. Furthermore, there are many situations where a parent agrees with the program and services proposed by the IEP and wants them to be implemented, but may not want to sign the IEP due to a concern or disagreement about a different component of the IEP.

N.J.A.C. 6A:14-3.7(e)2 requires a student's IEP to include a statement of detailed measurable annual academic and functional goals that must be related, as appropriate, to the NJSLS through the general education curriculum, unless otherwise required according to the student's educational needs or appropriate, student-specific functional needs. N.J.A.C. 6A:14-3.7(e)3 requires a student's IEP to also include benchmarks or short-term objectives that enable a student to be to be involved and progress in the general education curriculum. The benchmarks or short-term objectives also must address other educational needs that result from the student's disability. The rules, which also require the annual goals be aligned to the NJSLS for the grade in which the student is enrolled, are consistent with the requirements of the IDEA and its implementing regulations at 20 U.S.C. § 1414(d)(1)(A)(i)(II) and 34 C.F.R. §300.320(a)(2). The rules are also consistent with the 2015 United State Department of Education's policy guidance and the *Endrew F. v. Douglas County School District Re-1*, 580 U.S. ____ (2017) case cited by the petitioner. Moreover, a student's disability may not impact learning in every subject area, so

it would be inappropriate to require a school district to include goals and objectives for every subject.

As indicated above, the existing rules at N.J.A.C. 6A:14-2.3 and 3.7 are consistent with the requirements of the IDEA. Therefore, the petitioner's request is hereby denied.