

Public Notice

Education

State Board of Education

Notice of Action on Petitions for Rulemaking

Educational Facility Planning Standards

Educational Facilities

N.J.A.C. 6A:26-6.3

Petitioner: Robert J. Chester, Esq.

Take notice that on October 7 and 8, 2021, and December 3, 2021, the New Jersey State Board of Education (State Board) received three petitions for rulemaking from the above petitioner, requesting the State Board of Education amend N.J.A.C. 6A:26-6.3.

The petitioner sought three amendments at N.J.A.C. 6A:26-6.3(b), which sets forth 13 general design and construction requirements that, along with the educational facility planning standards delineated at N.J.A.C. 6A:26-6.3(c) through (h) and the Uniform Construction Code (UCC), form the requirements for the design and construction of public schools. N.J.A.C. 6A:26-6.4 sets forth specific standards for school facilities housing preschool students.

The first petition sought to amend the general design and construction requirements for public schools to include, in each classroom, a video camera(s) with sound that faces the teacher, for the purposes of student safety, student access to lectures and lessons while students are home sick, and parental access to what their children are learning in the classroom.

The second petition sought to amend the general design and construction requirements to require each classroom to be heated and air conditioned, the air quality to be monitored, and the heating, ventilation, and air conditioning (HVAC) to be at least the minimum efficiency

reporting value (MERV) 16 and to conform to American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) standards.

The third petition sought to require video cameras with sound in each special education classroom aimed at all visible areas, with recordings kept according to the Record Retention Guidelines of the New Jersey Archives, accessible on demand by the parents and guardians of the special education students in that classroom at the time.

A notice acknowledging receipt of the first two petitions was published in the November 15, 2021, New Jersey Register at 53 N.J.R. 1931(b). A notice of action indicating that additional time was needed for the Department of Education to deliberate about the first two petitions was published in the January 18, 2022, New Jersey Register at 54 N.J.R. 183(b). A notice acknowledging receipt of the third petition was published in the January 18, 2022, New Jersey Register at 54 N.J.R. 184(a).

The petitioner's two requests to require video cameras in each classroom, including each special education classroom, do not require or constitute a facility or furnishing or equipment and, as such, should not be included at N.J.A.C. 6A:26 as a general design and construction requirement. Furthermore, the expenditures associated with the proposed requirements most likely would not qualify for school facilities funding under the Educational Facilities and Construction Financing Act and would constitute an unfunded mandate.

The petitioner's proposed requirements related to video cameras in classrooms also implicate Federal, State, and local laws that govern the privacy of students and teachers, including but not limited to, the Federal Family Educational Rights and Privacy Act (FERPA) student records requirements, the Individuals with Disabilities Education Act (IDEA) privacy requirements, the student records regulations at N.J.A.C. 6A:32-7, and the individual collective

bargaining agreements governing school districts' and teachers' employer/employee relationships. Because the proposed video recording poses privacy and legal questions that may be individual to a school district's programs, employees, and students, it should not be imposed Statewide.

The petitioner's request related to video cameras in special education classrooms also seeks to regulate the alleged abuse and neglect of children in public school facilities, which is an area regulated by the New Jersey Department of Children and Families and not the Department of Education.

Regarding the petitioner's request related to HVAC systems and indoor air quality, the New Jersey Department of Health, Public Employees Occupational Safety and Health (PEOSH) already regulates indoor air quality of public buildings. Additionally, the UCC mechanical codes govern specifications for HVAC systems in schools. Therefore, it would be inappropriate and duplicative for N.J.A.C. 6A:26 to govern the indoor air quality of schools.

The petitioner's proposed amendment also assumes that all schools systems are capable of, and should be, meeting a specific minimum efficiency reporting value and specific HVAC requirements without reference to, and allowance for, the needs of each school district's unique facilities, construction viability, and prohibitive costs. Therefore, it would be inappropriate for N.J.A.C. 6A:26 to refer to specific MERV and HVAC standards, rather than a more general standard of air quality or reference to the PEOSH or UCC.

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