

Public Notice

Education

State Board of Education

Notice of Receipt of 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.

The petitioner seeks 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 seeks to harmonize the cost structure with the principles the Legislature used with New Jersey's Open Public Records Act (OPRA), which the petitioner states 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.

The petitioner also requests new rules at N.J.A.C. 6A:32-16, Educational Technology, to establish rules about spyware, monitoring technology, and academic freedom.

The petitioner states the requests are being made pursuant to N.J.A.C. 1:30-4.1, the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (P.L. 115-141), and *Endrew F. v. Douglas County School District RE-1*, 137 S.Ct. 988 (580 U.S. ___ (2017)).

The petitioner's stated interest is the following: to ensure that every student with a disability receives the best free, appropriate public education (FAPE) for each child; to ensure that all goals, including, but not limited to, all "New Jersey Core Curricular Goals," as required by Federal law; to enable every student in New Jersey to learn in a safe environment that is free from political and ideological bias and to participate fully in the marketplace of ideas; to minimize any potential for inequity in any form; to encourage educational innovation, accountability, and transparency; to empower parents in advocating for their children's education; and to minimize procedural issues that may inadvertently incentivize unnecessary conflict, including with equal access to records issues.

The petitioner states that the request for new rules at N.J.A.C. 6A:32-16 is 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. The petitioner also states that the public trust must be maintained, which, the petitioner contends, is accomplished best through honesty and disclosure and when not using cloud services of companies that engage in viewpoint discrimination to store sensitive student records. The petitioner further states that, to advance knowledge, students have to be encouraged to think and to ask questions. The petitioner states that asking thoughtful questions, and making and supporting high-quality arguments and

positions requires inquiry without manipulation and censorship. The petitioner also contends that supporting companies engaging in viewpoint manipulation and censorship through overt and secretive algorithmic manipulation denies students free inquiry.

Full text of the requested amendments and new rules are as follows (additions in boldface **thus**):

Subchapter 16. Educational Technology

6A:32-16.1 Definitions

“Monitoring Technology” shall mean such technologies, in hardware, software, networks, and other technological means used to monitor use of technology.

“Spyware” shall mean software with malicious behavior that aims to gather information about a person or organization and send it to another entity in a way that harms the user, by violating their privacy, endangering their device's security, and/or harming them in any other similar manner.

6A:32-16.2 Spyware and monitoring technology

- (a) Local education agencies (LEAs) shall 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.**
- (b) LEAs shall also notify student technology users and their parents each time a monitoring capability is used by them.**

6A:32-16.3 Academic freedom

Local education agencies (LEAs) shall not use any technology (hardware, software, cloud, network, or otherwise) 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.

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