

Public Notice

Education

State Board of Education

Notice of Receipt of Petition for Rulemaking

Special Education

Parental Consent, Notice, Participation, and Meetings

Individualized Education Program

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 seeks 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).

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 seeks 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 seeks to require parental consent to also be obtained prior to implementation of all subsequent IEPs.

The petitioner contends that the current structure does not require local education agencies (LEAs) to secure parental consent prior to implementing a new IEP for a student with a

disability. The petitioner also contends that this inadvertently incentivizes LEAs to not view the parent(s) of a student with a disability as an equal part of the student's child study team. The petitioner states that this subsequently encourages conflict and litigation, and that is not good for the student or anyone else.

The petitioner further contends that requiring parental consent before the implementation of a subsequent IEP, with a mechanism as cooperative as possible for resolving a conflict in the event of the lack of agreement, would realign incentives to encourage LEAs to cooperate with parents.

The petitioner's stated interest is to ensure that all interests are properly incentivized to ensure the best free, appropriate public education (FAPE) for each child, and to minimize procedural issues that may inadvertently incentivize unnecessary conflict. The petitioner also states that a parent of a student with a disability needs to be an equal part of the student's child study team.

The petitioner also seeks 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 states 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 did not provide suggested text for the requested amendment.

The petitioner states that the request will 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 petitioner also states the Federal guidance holds that failure to include specific core curricular goals is the denial of a FAPE.

The petitioner further states that an individual would reasonably presume that existing N.J.A.C. 6A:14-3.7 contains the requirement, but at least one LEA treats IEP goals as a

“prescription” that lists only the extra things necessary and not the complete educational program. The petitioner further stated that this means IEPs do not contain goals for physical education, visual and performing arts, library, or world languages.

The petitioner further requests that the Department audit the IEPs of all students with disabilities in the unspecified LEA for compliance with and *Andrew F. v. Douglas County School District* RE-1, *Ibid.*, other Federal authorities, and N.J.A.C. 6A:14-3.7.

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

Subchapter 2. Procedural Safeguards

6A:14-2.3 Parental consent, notice, participation, and meetings

(a) Consent shall be obtained:

1. (No change.)
2. Prior to implementation of the initial IEP resulting from (a)1 above **and all subsequent IEPs;**
3. - 9. (No change.)

(b) – (n) (No change.)

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.