

Public Notice

Education

State Board of Education

Notice of Receipt and Action on Petition for Rulemaking

Special Education

Special Education Program

Commencement of Case

Scheduling of Hearing by the Office of Administrative Law

Due Process Hearings

N.J.A.C. 1:6A-3.1 and 9.1 and 6A:14-2.7

Petitioner: Jamie Epstein, Esq.

Take notice that on February 15, 2023, the New Jersey State Board of Education (State Board) received a petition for rulemaking from the above petitioner, requesting the State Board amend N.J.A.C. 1:6A-3.1 and 9.1 and 6A:14-2.7.

N.J.A.C. 1:6A, Special Education Program, governs hearings at the Office of Administrative Law (OAL) that arise out of the special education program of the Department of Education (Department). N.J.A.C. 1:6A-3.1 specifies that the Department's Office of Special Education Programs (Office) shall immediately transmit cases upon conclusion of the resolution process or mediation. N.J.A.C. 1:6A-9.1 permits adjournments at the request of a party, requires an adjournment to be for a specific time period, and provides that the adjournment extends the deadline for a decision. N.J.A.C. 1:6A, which is promulgated by the OAL, is the continuation of the process that is utilized by the Department, pursuant to N.J.A.C. 6A:14.

N.J.A.C. 6A:14-2.7 establishes the rules for due process hearings and resolution meetings when a student's parent and a district board of education disagree regarding identification, evaluation, reevaluation, classification, or educational placement, the provision of a free, appropriate public education, or disciplinary action. The section relates to students with a disability and students identified as possibly having a disability.

When a parent requests a due process hearing or an expedited due process hearing, N.J.A.C. 6A:14-2.7(h) allows a district board of education to resolve a matter through a resolution meeting before proceeding to a due process hearing. The subsection requires the district board of education to conduct a resolution meeting with the parent and the relevant member(s) of the individualized education program (IEP) team who have specific knowledge of the facts identified in the request.

N.J.A.C. 6A:14-2.7(h)4 requires the Office to transmit the case to the OAL for a due process hearing if a due process hearing request is not resolved to the satisfaction of the parents within 30 days of the receipt of the request.

N.J.A.C. 6A:14-2.7(h)10 requires the parties to notify the Office, in writing, of the result of the resolution meeting. The Office is required to transmit to the OAL, a matter that is not resolved or withdrawn after 30 days from the date the request was received.

The petitioner seeks to amend N.J.A.C. 1:6A-3.1 and 9.1 to replace "resolution process" with "resolution meeting." The State Board does not have the authority to amend Title 1 of the New Jersey Administrative Code. Therefore, the parts of the petitioner's request that relate to N.J.A.C. 1:6A-3.1 and 9.1 are hereby denied.

The petitioner also seeks to amend N.J.A.C. 6A:14-2.7(h)4 to replace "within 30 days of the receipt of the petition" with "at the time of the resolution meeting or at mediation." The

petitioner also seeks to amend the paragraph to require the Office to transmit the case “immediately.” The petitioner also seeks to amend N.J.A.C. 6A:14-2.7(h)10 to delete the reference to the 30-day deadline.

The petitioner’s request states that a student is entitled to a final due process decision within 75 days of petition’s filing date. The petition also states that the existing regulations unnecessarily delay the student’s right to a timely due process decision by requiring the school to consent to the student’s request for transmittal. The petition further states that the existing regulations allow the school district to unilaterally block a student’s request to transmit the petition and the Department is complacent in unnecessarily delaying the student’s right to a timely final decision.

The petitioner provided the following example to illustrate the delay allowed under the existing regulations:

- A petition claiming an ongoing denial of a free, appropriate public education (FAPE) is filed on January 1;
- A resolution meeting occurs on January 10 and is unsuccessful;
- The student requests transmittal of the petition on January 10, but the school district refused to consent to the transmittal on that day; and
- Pursuant to the regulations, the Department does not transmit the petition until January 31.

The petitioner’s request states that, under this example, the student’s right to a timely due process final decision in 75 days unnecessarily delayed for 20 days for no reason, during which time the student continues to go without a FAPE. The petition also states that the 20-day delay

may also increase the school district's damages to compensate the student for the additional 20 days without a FAPE.

The petitioner's request contends that, if a petition is transmitted right away without the school district's consent, the parties are still able to attempt to settle the case during the next 20 days or at any time while the case is pending. The petitioner also contends that the State would have an additional 20 days to provide the final decision if the parties do not settle.

The petitioner states the request is being made pursuant to Federal law at 20 U.S.C. §§ 1415 et seq. and 34 CFR Part 300.

Full text of the requested amendments is as follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Chapter 6A Special Education Program

Subchapter 3. Commencement of Case

1:6A-3.1 Commencement of case

Upon unsuccessful conclusion of the resolution [process] **meeting** or mediation, as provided in N.J.A.C. 6A:14-2.7, the Office of Special Education Programs shall immediately transmit the matter with the transmittal form to the Office of Administrative Law. Copies of the transmittal form shall be sent to the parties.

Subchapter 9. Scheduling

1:6A-9.1 Scheduling of hearing by Office of Administrative Law

- (a) Upon unsuccessful conclusion of the resolution [process] **meeting** or mediation, as provided in N.J.A.C. 6A:14-2.7, the representative of the Office of Special Education Programs shall immediately contact the Clerk of the Office of Administrative Law and the Clerk shall assign a peremptory hearing date. The hearing date shall, to the greatest

extent possible, be convenient to all parties but shall be approximately 10 days from the date of the scheduling call.

- (b) (No change.)

Chapter 14 Special Education

Subchapter 2. Procedural Safeguards

6A:14-2.7 Due process hearings

- (a) – (g) (No change.)

- (h) When a parent requests a due process hearing or expedited due process hearing, the district board of education shall have an opportunity through a resolution meeting to resolve the matter before proceeding to a due process hearing. The district board of education shall conduct a resolution meeting with the parents and the relevant member(s) of the IEP team who have specific knowledge of the facts identified in the request.

- 1. – 3. (No change.)

- 4. If a due process hearing request is not resolved to the satisfaction of the parents [within 30 days of the receipt of the petition] **at the time of the resolution meeting or at mediation**, the Office shall **immediately** transmit the case to the Office of Administrative Law for a due process hearing.

- 5. – 9. (No change.)

- 10. The parties shall notify the Office, in writing, of the result of the resolution meeting. If the matter has not been resolved or withdrawn, it shall be transmitted **the case** to the Office of Administrative Law [after 30 days from the date the request was received].

- 11. (No change.)

(i) – (w) (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 OAL, a notice of action on the petition as it relates to N.J.A.C. 6A:14-2.7.