

Public Notice

Education

State Board of Education

Notice of Action on Petitions for Rulemaking

Managing for Equity in Education

N.J.A.C. 6A:7

Petitioners: Shawn Hyland, Director of Advocacy, New Jersey Family Policy Center, Andrea DeHoyos, Jennifer Portman, David Milkes, Jill Marie Carter, Kathy Stanzione, Barbara Matz, Pam Colonna, Grace Roberts, Mary Stevens, William Riker Jr., Sue Maurer, Necia McQueen, Ann Marie Grutta, Suzanne Trautwein, Alice Chan, Dannielle E. Garcia, Anita Kitanovski, Joy Marion, Brittany Grebnov, Christine McCarthy, Mary B. Meyers, Joanne Godlewsky, Jessica Coopersmith, Sal Runfola, William H. Hemberger, Kathleen Jenco, Richard V. Matrisciano, Vincent Matrisciano, Regina Matrisciano, Tracey DiPasquale, Daniela De Simone-Kiss, Dan Brown, Gina Laughery, Christopher Fox, Anita Usmiani, Thomas Hudak, Nicole Lois, Sylvia Kocses, Barbara K. Eames, Joseph Ferrandino, Barbara Dahdah-Anderson, Barbara J. Matrisciano, Lauran Hocquaux, Paul Lund, D.C., Donna Ann Young, Mark Stanzione, Janet Castro, Rosemarie Stone, Nathalie Zimmerman, Kevin Grosso, Yasmeen Muhammad, Sharon Grosso, Eugene DeBiase, James R. Sues, Robert F. Conkling, Mark Grussenmeyer, Laurie Madison, Mary McGinley, Richard Vincent, Paul and Jacqueline McKeon, Jeryl Maglio, Eric Croft, Risha Walden, Dennis Roberts, Bruce E. Young, Sherry Nardolillo, David J. Botti, Karen Lyden, Kathleen H. McCarthy, Lisa Santangelo, Rose Beth Mickel, Claire Burns, Mary Savas, Deborah Melicharek, Diane Carr, Amanda Speidel, Kyle Dupuis, Debra MacDonald, Tony Paskitti, Dana Veronica, Fran Deacon, Daniel Stevenson, Catherine M. Salvatore, Sam Stancheck, Larry Cirignano, Alana-Marie Gagliardi, Michael Pantaleo Jr., Stephen Linn, Karen Walker, Jennifer Kaplan, Harold Shack, Colin Pisano, Jeffrey Steven Hastings, Megan Swenson-

Mazur, Andrew Sangataldo, Dominick Cuzzo, Christopher Anderson, Ana Samuel, Vera Fedoroff, Barbara Sachau, Sanjeev Kulkarni, Kurt Ebert, Anthony Bocco, Christine Rossi, Katherine Tencza, Virginia Scudato, Matthew Silberstein, Thomas J. McTague, Suzanne Bocage, Helen and Daniel O'Mullan, Denise Ann Sickinger, Kenia Rivera, Audrey Souders, Jessica Hart, John Holly, Kylie Holly, Deborah Mileto, Melanie Bratton, Lisa Ferrara, Kathryn Cuddeback, Scott N. Russell, Pamela Geary, Pattie Bahrle, Nancy Wheaton, Michelle Dolasco, Brianna Turano, Jen Riccio, Denise Pavese, Rosaro Dragotta, Amy Galarowicz, Janet Coley-Lima, Pamela A. Russell, Elizabeth, Arlene F. Petri, Kevin Towers, Lisa DeMarco, Diana Tantleff, Toby Doe, Dana Kennedy, David Brown, Camile Kluge, Rhiannon Mindas, Thomas Crane, Maja Bednarski, Lois Furrevig, Alyssa Bashaw, Chris Alvarez, Scott Jones, Louis A. Perrotta, III, Laura Pence, David Americo, Michael Minaides, Robyn Miller, Michael J. Eadicicco, Vera Olinski, Christine Birmingham, Brigitte Formolo, Grace Pietrangelo, Judith Hyer, Ted Geuther, Ruben Dominguez, Ryan Day, Dian Koster, Stephanie Bally, Elizabeth Martinez, Elizabeth Erin Czar, DO, Arturo Moreno, PaulaAnn Fazio Escudero, Marguerite Ciccolella, David Chin, Ph.D., Ruth Feliciano, Danielle Dill, Jennifer Farrell, Mike DeCastro, Kristi Hanson, Rachael Hull, Dina Artale, Kimberly Pachman, Francine Abel, Carol Gaynor, Melissa Talamo, Christina Fisher, Veronica A Colombo, Martha Anderson, Tania Pinho, Kathy Muscillo, Donna Hart, Melissa Kiel, Franklyn D. Pennell, Jr., Kathy A. Mandel, Vanessa Panagiotopoulos, Shana Marie Russo, Diane Badessa, Patricia A. McTague, Christin Cerullo, Patrick Earley, Meghan Caputo, Selena Perry, Patricia L. Wenzel, Marjorie Padilla, Angela Robertson, Allan Simonovich, Edwin Lima, Lisa Werdal, Martha Torres, Keri Wilkes, Peter J. Pappas, Cassandra Anderson, Merissa Borawski, Carol Lewant, Yan Katsnelson, Timothy McQueen, Cindy Santora, Jennifer Reppert, Kerri Sirinides, Victoria Shields, Noelle Sciacca, Steven Mottola, Lauren Mottola, Joan Schiller, Jooyun Riviezzo, James Ripley, Theresa Loda, Denise Hirschhorn, Kristina Pawelko, Melissa Silva, Tom Lewandowski, Christine Flaherty,

Maria Argen, Grazyna Zwiercan, Jennifer Bida, Alma V. Conkling, Kristin Tencza, Tatiana Garcia, Eveleth Roderer, Adriel Bastos, Alicja Nowicka, Krystyna Dudej, Brian Edwards, Carol Eng, Nikole Braud, Stephen Murray, Christine Fusco, Jean Barrett, Donna Marie Suszynski, Wildenys Lozada, Paul C. Szesko, Mark Bishop, Taryn McGrane, Daniel Morales, Carolyn Hill, Christina Fochi, Stephen Farrell, Gina Salzman, Drew Cifrodelli, Christopher Antonio Jimenez-Ferreto, Erin Sweeny, Nisha Mathew, Rachele Hearst, Lori Mears, Frank Petrino, Lauren Blauvelt, Kristine Monaco, Vanessa Petrucelli, Marisa Perilli Soto, Evelyn Kaveski, Hilary Jersey, Matthew Timmerman, Dorothy Turse, Linda Dougherty, Ann Michele Dillon, Philip Salerno, Natalie Timmerman, Renee Martins, Kristine Wark, James R. Bosma, Lenore Conklin Mohamed, Kenya Warren, Dina Salerno, Karen Speer, Cindy Brennan, Shulamit Lazarus, Maria Carin, Sandra Mei Armstrong, Renee Travers, John Owen, Adam Braun, Elizabeth Trebus, Elisa DeVitto, Jessica Mascolo, Carol Gallentine, James Sarkar, Sue Cappel, Katalina Sánchez, Nancie Shauger, Heather O'Neill, Mary Ferns, Maria Quigley, Charissa Murray, Isabel Nieves de Caimares, Michael Inganamort, Kholood Ziada, Amr Eldessouky, Inas Hassan, Hoda Sayed, Safya Eldessouky, Nivien Eltarrani, Faten Attiah, Embarek Alwedi, Munera, Mariam Gandour, Hayat Jaoudar, Mohamed Abdallah Mahmoud Hassan, Amanie Khalil, Edwin Black, Alshaimaa Mohamed Abdelfattah, Samina Yasin, Ahmed Bedewy, Joseph Belnome, Touria Ansaisse, Saleh Elahwal, Salma Kaleem, Andrew S. Craven, Hala Eldessouky, Wagdy Ziada, Mohamed Nassim, Hazem Adham, Intesar Awadallah, Tarek Warraky, Imran Siddiqui, Ahmed Amer, Mariam Saleeb, Sana Ali, Yasir Farooq, Hader Hamza, Jasur Koshchanov, Maged Hegazy, George Saleeb, Hayat Ouziatine, Hossam Elfeky, Iman Rezk, Sanaa El Maslouhi, Asmae Raissi, Sherry Samuel, Alsaied Alboraey, Trista Kay, Hoda Sheishaa, Adel Mansour, Diane Smith, Diane Potts, Carlo Fioranelli, James A. Spinelli, John Lucas Ciannello, Marina Messiha, Devon Johnstone, Deborah D'Agostaro, Lee J. Iden, Deborah Allen, Francis A. Dollbaum III, Jeffrey Linn, Scott Spages, Raheel Siddiqui, Amy Kijowski, Lisa Jenkins, Peter Pendell, Richard Wagner, NJ,

Anthony J. Marra Jr., Doreen Blanchard Gliebe, Kurt J. Kalenak, Jacqueline McKeon, Jean Schumer, Christine McKeon, and Christopher D’Onofrio.

Take notice that on August 8, 2023, the New Jersey State Board of Education (State Board) received a petition for rulemaking from petitioner Shawn Hyland, requesting the State Board repeal specific amendments adopted at N.J.A.C. 6A:7 as part of the recent readoption with amendments (see 55 N.J.R. 1877(a)). Petitioner Shawn Hyland also requested new amendments that allow Christian students to opt out of any curriculum forcing them to affirm beliefs contrary to their religion.

On August 23, 24, 25, 27, 28, 30, and 31, 2023, September 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, 2023, and October 12, 13, 16, and 17, 2023, the State Board received petitions for rulemaking from the remaining above petitioners, requesting the State Board repeal amendments adopted at N.J.A.C. 6A:7, as part of the recent readoption with amendments, or repeal the chapter in its entirety.

The purpose of N.J.A.C. 6A:7 is to ensure all students, regardless of housing status, socioeconomic status, immigration status, or any protected category as stated at N.J.S.A. 10:5-1 et seq., such as race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, affectional or sexual orientation, genetic information, pregnancy or breastfeeding, sex, gender identity or expression, religion, disability, atypical hereditary cellular or blood trait, service in the Armed Forces of the United States, or nationality, are provided equal access to educational activities and programs by district boards of education. The educational activities and programs include the teaching of challenging curriculum based on the New Jersey Student Learning Standards (NJSLS), differentiated instruction, formative assessments aligned to the NJSLS, qualified teachers, and professional standards for teachers and school leaders. The educational activities and programs include the teaching of challenging curriculum based on the New Jersey Student Learning Standards (NJSLS), differentiated instruction, formative assessments aligned to the NJSLS, qualified teachers, and professional standards for teachers and school leaders. The rules specify standards for district boards of education in establishing

policies and procedures for the provision of educational activities and programs for all students, pursuant to: Article I, Paragraph 5, of the New Jersey State Constitution; the New Jersey Law Against Discrimination (NJLAD) (N.J.S.A. 10:5-1 et seq.); N.J.S.A. 18A:35-1 et seq., 18A:36-20, and 18A:38-5.1; Titles VI and VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq. and 2000e et seq.); Title IX of Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 701 et seq.); and the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400 et seq.).

Department of Education Response to Shawn Hyland Petition

Petitioner Shawn Hyland requested that the State Board repeal all recent amendments at N.J.A.C. 6A:7 that eliminated gendered nouns and pronouns from the text of the State Board's regulations in places where use of those nouns and pronouns was not intended to have a substantive effect.

The petitioner also requested that the State Board repeal the amendments to the revised term "equitable educational opportunity" at N.J.A.C. 6A:7-1.3, as well as the amendments at N.J.A.C. 6A:7-1.6(a)2 and 1.7(b)2i and 7 and (d)2.

The petitioner sought to repeal the amendments at N.J.A.C. 6A:7, alleging, among other things, that the amendments violate principles of Equal Protection, and the First Amendment of the United States Constitution (specifically with respect to free speech, the free exercise of religion, and the Establishment Clause). The petitioner also argued that the State Board should accommodate the religious beliefs of students by including new amendments allowing Christian students to opt out of any curriculum deemed contrary to their religion, and by repealing the amendments that the petitioner contends violate students' and parents' rights to religious freedom. Finally, the petitioner argued that some of the amendments at N.J.A.C. 6A:7 are not required by the New Jersey Law Against Discrimination and otherwise violate parental rights.

A notice acknowledging receipt of the Shawn Hyland petition was published in the September 18, 2023, New Jersey Register at 55 N.J.R. 2025(a). A notice of action indicating that additional time was needed for the Department of Education (Department) to deliberate about this petition was published in the November 6, 2023, New Jersey Register at 55 N.J.R. 2278(b).

As the Department explained in its response to the comments received during the rulemaking process (see 55 N.J.R. 1877(a)), the adopted amendments to eliminate gendered nouns and pronouns throughout the chapter and the utilization of more inclusive language reflective of the protective categories or classes, as defined, is consistent with the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) and Federal law (see Enforcement of Title IX of the Education Amendments of 1972 with Respect to Discrimination on Sexual Orientation and Gender Identity in *Light of Bostock v. Clayton County*, 86 Fed. Reg. 32,637 (June 22, 2021); <http://www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf>; and N.J.S.A. 18A:36-41).). The adopted amendments at N.J.A.C. 6A:7 that eliminated gendered nouns and pronouns from the text at N.J.A.C. 6A:7 also do not have any effect on the use of nouns and pronouns in school districts or by students, educators, or any other individuals.

Regarding the remaining adopted amendments at N.J.A.C. 6A:7, nothing in the adopted amendments is contrary to the rights and privileges set forth in the Constitution of the United States or the New Jersey State Constitution. The Department recognizes the rights of all of its students. N.J.A.C. 6A:7, as readopted with amendments and repeals, is the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. Again, as the Department noted in its response to comments received regarding the proposed amendments, the adopted amendments at N.J.A.C. 6A:7 ensure equity in education, prevent discriminatory behavior, and narrow the achievement gap by providing equitable access to educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq.

The Department disagrees that the adopted amendments at N.J.A.C. 6A:7 violate religious freedoms. Nothing in the adopted amendments at N.J.A.C. 6A:7 establishes a religion or prohibits the free exercise of religion. Additionally, nothing in the adopted amendments alters the protections afforded by the NJLAD, Art. I, Par. 4 of the New Jersey State Constitution, or the First Amendment to the Constitution of the United States, as applied through the Fourteenth Amendment as it pertains to the protections afforded to religious beliefs or religious liberty and the free exercise thereof. As to the petitioner's request to accommodate the religious beliefs of students by including new amendments allowing students to opt out of any curriculum deemed contrary to their religion, parents and guardians have always had the right to object to their children attending lessons related to health, family life education, or sex education pursuant to N.J.S.A. 18A:35-4.7. The adopted amendments at N.J.A.C. 6A:7 do not impact the statutory provisions.

The petition also stated that it includes sufficient disputed legal assertions that justify the petitioner's rulemaking petition being set for a contested hearing in the Office of Administrative Law (OAL). The Administrative Procedure Act (APA), at N.J.S.A. 52:14B-4(f), authorizes the Director of the Office of Administrative Law to order a public hearing on a rulemaking petition only if an agency fails to act in accordance with the time frame set forth at N.J.S.A. 52:14B-4(f), upon written request by the petitioner. See also N.J.A.C. 1:30-4.3 and 6A:6-4.2(d). The APA's provisions related to a petition for rulemaking do not mandate a contested hearing before the OAL on a petition for rulemaking; and a public hearing on a petition is not authorized unless an agency fails to act in accordance with the time frame set forth at N.J.S.A. 52:14B-4(f). As the filing of this notice of action falls within the timeframe set forth at N.J.S.A. 52:14B-4(f), there is no cause for a public hearing pursuant to N.J.S.A. 52:14B-4(f).

Department Response to Remaining Petitions

Notices acknowledging receipt of the remaining petitions were published in the October 2, 2023, New Jersey Register at 55 N.J.R. 2148(a), the October 16, 2023, New Jersey Register at

55 N.J.R. 2204(b), 2205(a), 2206(b), and 2207(a), and the December 4, 2023, New Jersey Register at 55 N.J.R. 2426(b). Notices of action indicating that additional time was needed for the Department to deliberate about the remaining petitions was published in the November 20, 2023, New Jersey Register at 55 N.J.R. 2359(b) and the January 2, 2024, New Jersey Register at 56 N.J.R. 88(a). A notice of receipt and action indicating that additional time was needed for the Department to deliberate about the petition submitted by Christopher D’Onofrio was published in the December 4, 2023, New Jersey Register at 55 N.J.R. 2429(c).

As the Department explained in its response to the comments received during the rulemaking process (see 55 N.J.R. 1877(a)), N.J.A.C. 6A:7, as readopted with amendments and repeals, is the result of changes to the law and a collaboration with stakeholders who are experts in the field of educational equity. Again, as the Department noted in its response to comments received regarding the proposed amendments, the adopted amendments at N.J.A.C. 6A:7 ensure equity in education, prevent discriminatory behavior, and narrow the achievement gap by providing equitable access to educational activities and programs and opportunities for positive student interaction, regardless of housing status, socioeconomic status, immigration status, or any protected category set forth at N.J.S.A. 10:5-1 et seq.

Furthermore, as the Department noted in its response to comments received regarding the proposed amendments, nothing in the adopted amendments is contrary to the rights and privileges set forth in the Constitution of the United States or the New Jersey State Constitution or establishes a religion or prohibits the free exercise of religion. Additionally, nothing in the adopted amendments alters the protections afforded by the NJLAD, Art. I, Par. 4 of the New Jersey State Constitution, and the First Amendment to the Constitution of the United States, as applied through the Fourteenth Amendment as it pertains to the protections afforded to religious beliefs or religious liberty and the free exercise thereof.

Moreover, N.J.A.C. 6A:7, as readopted with amendments in 2023, continues to be necessary to ensure all students are provided equal access to educational activities and programs by district boards of education.

For all of the above-mentioned reasons, after due consideration pursuant to law, the petitioners' requests are hereby denied.