

Public Notice

Education

State Board of Education

Notice of Action on Petition for Rulemaking

Implementation of Thermal Imaging Interviews for Applicants for Positions Working with Children

Petitioner: Caleb L. McGillvary.

Take notice that on August 6, 2024, the New Jersey State Board of Education (State Board) received a petition for rulemaking from the above petitioner, requesting the State Board adopt new rules to require applicants for positions involving work with children to undergo thermal imaging interviews to assess sexual arousal responses.

The petitioner sought to require thermal imaging interviews of applicants to enhance the safety and well-being of children in educational and childcare settings. The petitioner's request stated that child safety in all educational and childcare environments is of paramount importance, but current methods for screening applicants are insufficient in detecting individuals who may pose a risk to children. The request further stated that thermal imaging offers a promising solution for more effective screening because it is a non-invasive and efficient method that is effective in accurately detecting sexual arousal in both men and women, minimizes discomfort for applicants, and can be seamlessly integrated into the existing hiring process.

A notice acknowledging receipt of the petition was published in the September 3, 2024, New Jersey Register at 56 N.J.R. 1816(b).

The State Board and Department of Education takes seriously the safety and wellness of all students. However, the petitioner's request to establish new rules to require applicants for positions involving work with children to undergo thermal imaging is not aligned to State law, raises ethical and procedural concerns, lacks clear evidence that it would significantly enhance the existing screening processes, and partially falls outside of the agency's authority.

First, the requested rules do not align with existing N.J.S.A. 18A:6-7.1, which already prescribes a comprehensive remedy for screening potential applicants through the process of fingerprinting and background checks. The statute already provides a clear, robust, and legally sound framework for identifying individuals who may pose a risk to children, including individuals with criminal histories that would disqualify them from employment in educational settings. The introduction of thermal imaging as an additional requirement lacks statutory support and exceeds the Department's existing legal authority.

State law provides school districts the autonomy and authority to establish their own hiring practices, provided they comply with State mandates, such as the requirements for criminal record checks for employment or volunteer service in public schools as set forth at N.J.S.A. 18A:6-7.1. Therefore, school districts are already empowered to implement additional safeguards within their hiring processes that align with their specific needs and circumstances. Establishing regulations to mandate the use of thermal imaging during interviews would infringe upon this autonomy by imposing an unnecessary and potentially discriminatory screening method.

Second, the use of thermal imaging and polygraph examinations to detect sexual arousal or potential criminality as part of a hiring process raises ethical issues. This method could lead to biases, prejudices, and inconsistencies in results, as the technology may not be reliable or scientifically validated for such purposes. The risk of false positives or misinterpretation of results could result in unfair discrimination against applicants, thereby leading to potential legal challenges and damage to the reputations of school districts. Furthermore, the very nature of this screening method could be considered invasive, humiliating, and undermining the dignity and privacy of applicants.

Third, there is no clear evidence to suggest that thermal imaging and polygraph would significantly enhance the existing screening processes or that they could be integrated seamlessly into the school districts' hiring practices. The petitioner has not provided sufficient data or

research to substantiate the effectiveness of thermal imaging in this context, nor has there been consideration of the logistical, financial, and operational challenges that would accompany its implementation.

Fourth, neither the State Board nor the Commissioner of Education (Commissioner) has the authority to change background check requirements for childcare center employees, as requested by the petitioner. The Department of Children and Families (DCF) – and not the Department of Education (Department) – regulates background check procedures for child abuse record information and criminal history background check procedures related to childcare center employees pursuant to N.J.A.C. 3A:52. N.J.A.C. 6A:13A, Elements of High-Quality Preschool Programs, requires childcare centers and Head Start agencies that enter into a contractual arrangement with a district board of education to provide a full-day preschool program pursuant to N.J.A.C. 6A:13A to present evidence of compliance with DCF’s background check procedures for child abuse record information and criminal history background check procedures.

Lastly, the petitioner’s request failed to include all components set forth at N.J.A.C. 1:30-4.1(b) and 6A:6-4.1(b), which require a petition for rulemaking to state the substance or nature of the rulemaking that is requested, the reasons for the request and the petitioner's interest in the request, and references to the authority of the agency to take the requested action. The request did not indicate the petitioner’s interest in it or reference the agency’s authority to take the requested action.

For all of the above-mentioned reasons, after due consideration pursuant to law, the petitioner’s request is hereby denied.