

## **Notice of Proposal for Readoption with Amendments of N.J.A.C. 6A:6, State Board of Education Rulemaking Process**

The following is the accessible version of the notice of proposal related to the readoption with amendments of N.J.A.C. 6A:6. The notice includes two sections – [summary](#) and [text of the proposed amendments](#).

## **Education**

### **State Board of Education**

#### **State Board of Education Rulemaking Process**

#### **Proposed Readoption with Amendments: N.J.A.C. 6A:6**

Authorized By: New Jersey State Board of Education, Angelica Allen-McMillan, Ed.D., Acting Commissioner, Department of Education and Acting Secretary, State Board of Education.

Authority: N.J.S.A. 18A:4-15 and 52:14B-1 et seq.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-052.

Submit written comments by August 6, 2021, to:

Diane Shoener, Director  
Office of the State Board of Education  
New Jersey Department of Education  
100 River View Plaza  
PO Box 500  
Trenton, New Jersey 08625-0500  
Email: [chapter6@doe.nj.gov](mailto:chapter6@doe.nj.gov)

The agency proposal follows:

### **Summary**

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:6, State Board of Education Rulemaking Process, with amendments. This chapter informs the education community and the public of the State Board of Education's and the Department's procedures for

promulgating and amending rules in Title 6A of the New Jersey Administrative Code. The chapter also provides a procedure for an interested person to petition the State Board to create, amend, or repeal a rule. The chapter was scheduled to expire on December 5, 2021. As the Department filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date of the chapter was extended 180 days to June 3, 2022, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The chapter complies with the Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq., which governs the rulemaking activities of the Department and all other State agencies by providing a uniform application and administration of the rulemaking process. The statutory requirements are implemented by N.J.A.C. 1:30, Rules for Agency Rulemaking, and administered by the Office of Administrative Law (OAL).

The State Board of Education (State Board) is the policymaking body of the Department, acting on recommendations from the Commissioner of the Department to make, enforce, modify, or repeal rules that carry out the school laws enacted by the New Jersey Legislature. Rulemaking can also be initiated by the State Board based upon a change in agency policy, an executive order issued by the Governor, a court decision, a rulemaking petition from an interested person, an imminent danger or peril, or a Federal requirement.

The State Board considers proposed amendments, repeals, and/or new rules at public meetings using a rulemaking process that can take up to 12 months. The State Board fulfills its role as a liaison to the public by conducting its business at public meetings, pursuant to the Senator Byron M. Baer Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq.

As a lay board, one of the State Board's primary roles is to provide a link between the Department and parents, teachers, administrators, taxpayers, education associations, and other

agencies for the benefit of New Jersey's students. The State Board values public input and, therefore, the chapter gives the public and stakeholders adequate notice of anticipated rulemaking activity and provide opportunities for public participation in the rulemaking process. The State Board's rulemaking process has always incorporated APA requirements and allowed for an even greater opportunity for public notice and participation than required by statute and rule.

Although the APA requires only written comment, the State Board schedules public testimony sessions where the public appears before a panel of State Board members to testify about a proposed rulemaking. The comments received at public testimony sessions are shared with all the State Board members and the Department's responses to the comments become an integral part of official rulemaking documents. Three times each year, the State Board schedules an "open topic" public testimony session, so members of the public can speak to the State Board about an educational issue of their choice, including any issue related to Title 6A, except for matters that are the subject of litigation.

Due to the ongoing COVID-19 pandemic, the State Board has been holding virtual meetings and receiving written public testimony about New Jersey Administrative Code rulemakings currently under its consideration.

The State Board and the Commissioner are committed to the idea that stakeholders have the right to be heard and they jointly agree to give the education community and the public additional time whenever they determine that a rulemaking would benefit from extending the process.

N.J.A.C. 1:30 and the APA also require the Department to promulgate a process to receive and respond to a rulemaking petition from an interested person requesting an

amendment, repeal, or new rule at Title 6A. In accordance with N.J.A.C. 1:30-4, N.J.A.C. 6A:6-4 defines the steps a petitioner must take to initiate a rulemaking petition before the State Board and the Commissioner.

The following is a summary of the rules proposed for re adoption and the proposed amendments. Unless otherwise stated, amendments are proposed to update statutory references or for grammatical improvement or clarity.

### **Subchapter 1. General Provisions**

#### **N.J.A.C. 6A:6-1.1 Scope**

This section sets forth the chapter's scope, which includes the State Board's rulemaking process and the process by which an interested party can submit a petition to adopt a new rule or to amend or repeal an existing rule in Title 6A of the New Jersey Administrative Code.

#### **N.J.A.C. 6A:6-1.2 Definitions**

This section defines terms used in the chapter to help the public understand the State Board's rulemaking process.

### **Subchapter 2. Notification of Rulemaking Activity**

#### **N.J.A.C. 6A:6-2.1 Notice of State Board meeting dates and rulemaking activity**

This section sets forth the manner in which the public is notified of State Board meeting dates and rulemaking activity. The State Board annually adopts by resolution a calendar of meeting dates that include the State Board's public monthly meetings, work sessions, and public testimony sessions. The State Board also provides, on its monthly public meeting agenda, notice

of new rules, amendments, or repeals to be discussed or acted upon. The Department posts on its website both the calendar of meeting dates and the rulemakings to be discussed or acted upon.

### **Subchapter 3. State Board Rulemaking Process**

#### **N.J.A.C. 6A:6-3.1 State Board rulemaking process**

This section sets forth the State Board's rulemaking process and all of the steps involved in considering, proposing, and adopting new rules, amendments, repeals, or readoptions. The rulemaking process is codified as follows:

##### *Policy Discussion Paper*

The Department may prepare a policy discussion paper and present it to the State Board and to stakeholders for input before documents related to a new rule, amendment, repeal, or readoption are presented formally at a State Board meeting for consideration.

##### *Discussion Level Document*

The Department develops a discussion level document for a new rule, amendment, repeal, or readoption and presents it to the State Board at a public meeting. A discussion level document includes a summary memo, chapter table of contents, rule text, and a comment response form, when applicable. The State Board can place the discussion level document on its agenda for one or more public meetings, allow a written comment period of at least 30 days, and/or take public testimony before the corresponding notice of proposal is approved and published in the New Jersey Register.

##### *Proposal Level*

Upon the Commissioner's recommendation, the State Board discusses and votes at a public meeting to publish a notice of proposal in the New Jersey Register to promulgate new rules, amendments, or repeals pursuant to the APA. The State Board takes oral testimony on a notice of proposal after it is discussed at a public meeting and published in the New Jersey Register. The State Board provides notice of the proposed rulemaking at least 30 days before the close of the comment period through methods other than publication in the New Jersey Register through the Department's distribution of the notice of proposal or a statement of the proposed action's substance to people who have requested notice of the State Board's rulemaking activity and to news media maintaining a press office in the State House Complex.

The Department also posts on its website the notice of proposal or a statement of the proposed action's substance and distributes it to a list of stakeholders. The Department further utilizes the distribution to the news media of a press release regarding a filed notice of proposal as the additional method of publicity required by the APA.

#### *Adoption Level*

Upon the Commissioner's recommendation, the State Board discusses, and votes, at a public meeting to publish a notice of adoption in the New Jersey Register to promulgate new rules, amendments, or repeals pursuant to the APA.

#### *Extended Comment Period and Public Hearings*

The section allows the President, in consultation with the Commissioner, to extend, for 30 days, the comment period of a proposed rulemaking due to sufficient public interest. The rules stipulate that sufficient public interest for extending the comment period exists when the comments received do one of the following: reveal a previously unrecognized impact on a

regulated party; go beyond the scope of comments previously considered by the State Board during the current rulemaking process; or raise unanticipated issues related to the notice of proposal.

The section allows an interested person to seek a public hearing on a particular rulemaking. The rules stipulate that sufficient public interest for the purpose of holding a public hearing on a proposed rulemaking is demonstrated if the President, in consultation with the Commissioner and upon review of the application, determines within 45 days of the notice of proposal's publication that additional data, findings, and/or analysis regarding the notice of proposal are necessary for the State Board to review prior to adoption to ensure the notice does not violate the intent of its statutory authority. The section also requires a public hearing on a notice of proposal to be conducted in accordance with the APA. The rules further establish the process for the hearing officer's recommendations to be presented to the State Board and acted upon.

N.J.A.C. 6A:6-3.1(g) allows the President, in consultation with the Commissioner, to consider an application of an interested person who seeks a public hearing on a particular rulemaking. The rule also requires the application to be submitted within 30 days of the notice of proposal's publication in the New Jersey Register. It also requires the application to be submitted on a Commissioner-prescribed form. N.J.A.C. 6A:6-3.1(g)1 directs interested persons to file an application for a public hearing with the State Board Office, while N.J.A.C. 6A:6-3.1(g)1i, ii, and iii stipulate the information that must be in the application. The Department proposes to amend N.J.A.C. 6A:6-3.1(g) and (g)1 to replace "application" with "request" or "request for a public hearing" and to delete references to "a Commissioner-prescribed form." The Department also proposes to amend N.J.A.C. 6A:6-3.1(g) to add that a request must be submitted "in



writing.” The Department further proposes to amend N.J.A.C. 6A:6-3.1(g)1 to add the email address to which an interested party can submit request. The proposed amendments will enable an interested party to request a public hearing on a rulemaking without having to submit a specific application and to do so via email.

#### **Subchapter 4. Petitions for Rulemaking**

##### **N.J.A.C. 6A:6-4.1 Preparation of rulemaking petition by petitioner**

This section sets forth the process for an interested person to file a petition to adopt a new rule or to amend or repeal an existing rule at Title 6A of the New Jersey Administrative Code. The section requires the petitioner to include as part of a petition for rulemaking the following information: the petitioner’s name, mailing and/or email address, and phone number; the substance or nature of the rulemaking request; the reasons for the request and the petitioner’s interest in it; and references to the agency’s authority to take the requested action. The section also stipulates that the petitioner may include in the petition the text of the proposed new, amended, or repealed rule.

N.J.A.C. 6A:6-4.1(d) allows the petitioner to submit the rulemaking petition to the State Board Office in-person, through the office’s mailing or email addresses, or through the petition for rulemaking webpage. The Department proposes an amendment to update the office’s email address.

##### **N.J.A.C. 6A:6-4.2 Department response to a petition for rulemaking**

This section sets forth the process for the State Board and the Department to respond to an interested person who has filed a petition to adopt a new rule or to amend or repeal an existing

rule at Title 6A of the New Jersey Administrative Code. The rules require the Department, within 15 days of receipt of the rulemaking petition, to file with the OAL for publication in the New Jersey Register, a notice of the petition. The section also sets forth the required contents of the notice.

The rules also require the President, in consultation with the Commissioner, to determine the course of action for responding to the petition as one of the following: deny the petition, grant the petition, or refer the matter for further deliberation. The course of action must be determined within 60 days of the rulemaking petition's receipt. If the petition is denied, the Commissioner must provide the petitioner with a written statement as to the reasons for the denial and include them in the notice of action filed with the OAL. If the petition is granted, the section requires a rulemaking to be initiated within 90 days of the approval. In either case, the President and the Commissioner must notify the State Board of the action taken. If the petition is referred for further deliberation, the petitioner must be notified of the referral's nature, a notice of action must be filed with the OAL, and the deliberations must conclude within 90 days. The Commissioner also must provide, in writing, the petitioner with the results of the deliberation and must file with the OAL the results for publication in the New Jersey Register.

### **Appendix. State Board of Education Rulemaking Process**

The chapter appendix provides an overview of the State Board's rulemaking process.

As the Department has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

## **Social Impact**

The rules proposed for readoption with amendments set forth the State Board's rulemaking process and comply with the APA. The State Board's rulemaking process includes early notification to the education community regarding rulemakings. The process also includes extensive public input while rules, amendments, and/or repeals are developed, discussed, and considered. All State Board discussions and actions to publish notices of pre-proposal, proposal, or adoption take place at regularly scheduled State Board meetings that are open to the public, pursuant to the OPMA. The State Board's approach to rulemaking fosters an on-going dialogue between the regulated public and State Board members. This kind of exchange improves the quality of the rules that are developed and ensures interested persons can actively participate in the rulemaking process. This process results in an overall positive impact on students, teachers, parents, taxpayers, school districts, and administrators.

Early public notice of rulemaking allows the regulated parties to participate in the process and to prepare for the possibility of changes in rules. Advanced notice of new rules, amendments, and/or repeals that will have a significant impact on the regulated parties often provides much needed planning time for implementation and compliance once the new rules, amendments, and/or repeals have been adopted.

## **Economic Impact**

The economic impact of the rules proposed for readoption with amendments can be determined only on a case-by-case basis. The decision to submit comments or to attend a public testimony session or a State Board meeting is strictly voluntary and the anticipated costs depend on individual factors related to the interested party or association.

The decision to submit a petition for rulemaking or to request a public hearing also is voluntary and any anticipated cost should be considered by the petitioner before choosing this method to address an issue related at Title 6A of the New Jersey Administrative Code. The Department contends that the cost to prepare and deliver a petition is insignificant.

### **Federal Standards Statement**

There are no Federal laws, rules, or regulations that impact the rules proposed for readoption with amendments, therefore, a Federal standards analysis is not required. N.J.A.C. 6A:6 is based on State statutes that establish the chapter's authority.

### **Jobs Impact**

The rules proposed for readoption with amendments will result in neither the generation nor the loss of jobs in the State.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

### **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments do not impose reporting or recordkeeping requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules inform the public, including small businesses, of the State Board's rulemaking process and the requirements for submitting a petition for rulemaking or requesting a public hearing on a proposed rulemaking. While the rules contain certain

requirements related to the contents of a petition or a hearing request, they impose very minimal costs on the petitioner, and should not require the need for professional services. As the petition process and hearing requests are voluntary and impose only insignificant costs, no differentiation in requirements based upon petitioner or requestor business size is made.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments concern the State Board's process for promulgating, amending, and readopting education regulations at Title 6A of the New Jersey Administrative Code.

### **Smart Growth Development Impact Analysis**

The proposed rules for readoption with amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments concern the State Board's process for promulgating, amending, and readopting education regulations at Title 6A of the New Jersey Administrative Code.

### **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

There is an extreme unlikelihood that the rules proposed for readoption with amendments

would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with amendments concern the State Board's process for promulgating, amending, and readopting education regulations at Title 6A of the New Jersey Administrative Code.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at [N.J.A.C. 6A:6](#).

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

#### Subchapter 1. General Provisions

##### 6A:6-1.2 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise:

...

"Notice of adoption" means the document described [in] **at** N.J.A.C. 1:30-6.1 that must be submitted to the Office of Administrative Law [for filing] and then published in the New Jersey Register. When it is presented to the State Board at a public meeting, a notice of adoption includes a summary memo and rule text and a comment/response form that contains the Department's responses to comments received during the comment period.

"Notice of proposal" means the document described [in] at N.J.A.C. 1:30-5.1 that must be submitted to the Office of Administrative Law [for filing] and then published in the New Jersey Register and distributed to the Legislature and interested persons. When it is presented to the State Board at a public meeting, a notice of proposal includes a summary memo and rule text.

...

"Work session" means a State Board forum, conducted in compliance with the **Senator Byron M. Baer** Open Public Meetings Act (**OPMA**), N.J.S.A. 10:4-[1]6 et seq., at which the State Board and the Commissioner discuss a policy discussion paper, pre-proposal, or other issues that require an in-depth discussion.

1. The State Board may also take formal action at a work session to vote on an item of action requiring notice to the public pursuant to the [Open Public Meetings Act, N.J.S.A. 10:4-1 et seq] **OPMA**.

#### Subchapter 2. Notice of Anticipated Rulemaking Activity

##### 6A:6-2.1 Notice of State Board meeting dates and rulemaking activity

(a) – (b) (No change.)

(c) The Department may publish in the New Jersey Register quarterly calendars of the Department's anticipated proposed rulemaking activities, pursuant to N.J.A.C. 1:30-3. If developed, the calendars shall be amended as necessary in accordance with N.J.A.C. 1:30-3.2.

1. If **it is** developed, the Department will include a copy of the quarterly rulemaking calendar on the Department's website at <http://www.state.nj.us/education/>.

2. If **it is** developed, the Department will provide notice of the availability of its quarterly rulemaking calendar in the same manner as it publicizes its proposed rulemakings pursuant to N.J.A.C. 6A:6-3.1(d) and 1:30-5.2 to inform persons most likely to be affected or interested by the proposed rules.
3. (No change.)

### Subchapter 3. State Board Rulemaking Process

#### 6A:6-3.1 State Board rulemaking process

- (a) (No change.)
- (b) The Department may develop a discussion level document for any new rule, amendment, or repeal and present it to the State Board. The State Board may decide to:
  1. Place the discussion level document on the State Board's monthly agenda at one or more public meetings in accordance with the **Senator Byron M. Baer** Open Public Meetings Act, [(N.J.S.A. 10:4-[1]6 et seq.)];
  2. – 3. (No change.)
- (c) – (f) (No change.)
- (g) In determining whether sufficient public interest has been demonstrated for purposes of conducting a public hearing, pursuant to N.J.A.C. 1:30-5.5, the President, in consultation with the Commissioner, shall consider the [application] **request** of an interested person. [that has been submitted on a Commissioner-prescribed form.] The [application] **request for a public hearing** shall be submitted, **in writing**, within 30 days following the notice of proposal's publication in the New Jersey Register[.] **and shall comply with the following requirements:**



1. A person interested in a public hearing on a notice of proposal shall submit [an application, on a Commissioner-prescribed form,] **a request** to the State Board Office, New Jersey Department of Education, River View Executive Plaza, Building 100, PO Box 500, Trenton, NJ 08625-0500 **or through email to stateboardoffice@doe.nj.gov**. The [application] **request for a public hearing** shall contain the following information:
  - i. – iii. (No change.)
- (h) Sufficient public interest for the purpose of holding a public hearing, pursuant to N.J.A.C. 1:30-5.5, shall be demonstrated if the President, in consultation with the Commissioner and upon review of the [application] **request for a public hearing**, determines within 45 days of the notice of proposal’s publication date that additional data, findings, and/or analysis regarding the notice of proposal are necessary for the State Board to review prior to adoption to ensure the notice of proposal does not violate the intent of the statutory authority.
- (i) A public hearing on a notice of proposal shall be conducted in accordance with N.J.A.C. 1:30-5.5.
  1. The Commissioner shall present the hearing officer’s recommendations, made pursuant to N.J.A.C. 1:30-5.5(f), at a State Board public meeting, pursuant to the **Senator Byron M. Baer** Open Public Meetings Act, N.J.S.A. 10:4-[1]6 et seq. The State Board shall act upon the Commissioner’s recommendation to accept, reject, or modify the hearing officer's recommendations.
  2. (No change.)
- (j) (No change.)

## Subchapter 4. Petitions for Rulemaking

### 6A:6-4.1 Preparation of rulemaking petition by petitioner

(a) – (c) (No change.)

(d) The petitioner may submit the rulemaking petition in one of the following ways: [via] **by** mail to State Board Office, New Jersey Department of Education, River View Executive Plaza, Building 100, [P.O.] **PO** Box 500, Trenton, NJ 08625-0500; [via e-mail] **through email** to [[stateboardoffice@doe.state.nj.us](mailto:stateboardoffice@doe.state.nj.us)] **stateboardoffice@doe.nj.gov**; or [via] **through** the Department's website at [www.state.nj.us/education/code/petitions](http://www.state.nj.us/education/code/petitions).