

**PUBLIC NOTICE**

**EDUCATION**

**STATE BOARD OF EDUCATION**

**Notice of Receipt and Action of Petition for Rulemaking**

**Filing of Written Charges and Certificate of Determination; and**

**Format of Certificate of Determination**

**N.J.A.C. 6A:3-5.1 and 5.2**

Petitioner: Christine Gillespie.

**Take notice** that on February 3, 2016, the New Jersey State Board of Education received a petition for rulemaking from the above petitioner regarding the rules pertaining to the Charges Under Tenure Employees Hearing Act.

The petition requests the Department of Education (Department) amend N.J.A.C. 6A:3-5.1(b)4 and 6 and (c)8 and 9, and N.J.A.C. 6A:3-5.2(a)1 and 3, to remove “or the State district superintendent.”

The petitioner states the rules amount to numerous alleged violations of State, Federal, and constitutional law and have granted a quasi judicial authority to State district superintendents under the Tenure Employee Hearing Law, N.J.S.A. 18A:6-11. The petitioner also states the

current rules are “impermissibly vague,” “constitutionally repugnant,” *ultra vires*, unconstitutional, and void *ab initio* agency rules. The petitioner also states the rules, which have implemented N.J.S.A. 18A:6-11 for several decades as it applies to all tenured employees, allow the discriminatory, illegal denial of tenure rights of tenured employees in State-operated school districts. The petitioner states there is no authority granted in the identified statutes that permits tenure due process rights to be denied tenured employees of State-operated school districts.

The petitioner further states the rules violate multiple statutes in Title 18A of the New Jersey Statutes, the United States and the New Jersey Constitutions, the Administrative Procedure Act, and the Employer-Employee Relations Act, N.J.S.A. 34:13A-1 to 30.

The Department has reviewed the petition and determined that no action is warranted. The petitioner submitted petitions for rulemaking in April 2006 and May 2012 to repeal N.J.A.C. 6A:3-5.1(b)4 and 6 and (c)8 and 9, and N.J.A.C. 6A:3-5.2(a)1 and 3, or to amend the rules to remove reference to the State district superintendent in the tenure hearing process as it relates to State-operated school districts. The petitioner also submitted in December 2015 a petition that was not specific about the action sought but led the Department to determine the petitioner was seeking the same action requested in April 2006 and May 2012. The April 2006 and May 2012 petitions both were denied by the Department and appealed by the petitioner to the New Jersey Superior Court, Appellate Division, which affirmed the Department’s denials in both cases. See *Gillespie v. Department of Education*, 397 N.J. Super. 545 (App. Div. 2008), *certif. den.* 195 N.J. 420 (2008) and *In re: Petition for Rulemaking Pursuant to N.J.S.A. 52:14B-4*, No. A-28-12 (App. Div. March 20, 2014). The December 2015 petition also was denied by the Department.

Furthermore, N.J.A.C. 6A:3-5.1(c)8 and 9 have been deleted since the petitioner’s May 2012 rulemaking petition. The State Board adopted the deletion (see 45 N.J.R. 1292(a)) to reflect statutory changes for the processing of inefficiency charges as stipulated in the Teacher Effectiveness and Accountability for the Children of New Jersey (TEACH NJ) Act, P.L. 2012, c. 26.

Finally, the Legislature is responsible for determining how tenure charges should be processed in State-operated school districts, which cannot be changed by rulemaking. As the Appellate Division previously held, the rules merely implement the legislation.

Therefore, the petitioner's request is denied.