

CHAPTER 17
STUDENTS AT RISK OF NOT RECEIVING
A PUBLIC EDUCATION

Authority

N.J.S.A. 18A:38-1, 18A:7B-12, 18A:7B-1
 et seq. and 18A:7F-1 et seq.

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SUBCHAPTER 1. GENERAL PROVISIONS

6A:17-1.1 Purpose

These rules are adopted in order to ensure that homeless children and students placed in State facilities are provided a thorough and efficient education. These rules establish uniform Statewide policies and procedures to ensure the enrollment of homeless children and to respond to appeals made by parents or other parties related to their enrollment. The rules also identify general program requirements related to the operation, administration and approval of educational programs in State facilities.

SUBCHAPTER 2. EDUCATION OF HOMELESS CHILDREN

6A:17-2.1 Scope

These rules apply to district boards of education providing general education services to students in grades preschool through 12 and special education services to students ages three through 21.

6A:17-2.2 Definitions

The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise:

“District liaison for the education of homeless children” means the person identified in each school district who facilitates all of the activities needed to ensure the enrollment of homeless children.

“District of residence” means the district in which the parent last resided prior to becoming homeless.

“Homeless child” means a child or youth who lacks a fixed, regular and adequate residence, pursuant to N.J.S.A. 18A:7B-12 and N.J.A.C. 6A:17-2.3.

“Parent” means the natural or adoptive parent, legal guardian, foster parent, surrogate parent, and person acting in the place of a parent such as the person with whom the child legally resides or a person legally responsible for the child’s welfare.

6A:17-2.3 Determination of homeless status

(a) A district board of education shall determine that a child is homeless for purposes of this subchapter when he or she resides in any of the following:

1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:
 - i. Hotels or motels;
 - ii. Congregate shelters, including domestic violence and runaway shelters;
 - iii. Transitional housing; and
 - iv. Homes for adolescent mothers;
2. A public or private place not designated for or ordinarily used as a regular sleeping accommodation, including:
 - i. Cars or other vehicles excluding mobile homes;
 - ii. Tents or other temporary shelters;
 - iii. Temporary shelters provided to migrant workers and their children on farm sites; or

3. The residence of relatives or friends with whom the homeless child is temporarily residing out of necessity because the family lacks a regular or permanent residence of its own.

6A:17-2.4 Responsibilities of the district of residence

(a) The district of residence for a homeless child shall be responsible for the education of the child and shall:

1. Determine the district in which the child shall be enrolled after consulting with the parent pursuant to N.J.A.C. 6A:17-2.6;

2. Pay the cost of tuition pursuant to N.J.A.C. 6A:23-3.1 when the child attends school in another district; and

3. Provide for transportation for the child pursuant to N.J.A.C. 6A:27-6.2.

(b) The determination of a homeless child's district of residence shall be made by the chief school administrator or designee of the school district(s) involved pursuant to N.J.A.C. 6A:17-2.5 based upon information received from the parent, the Department of Human Services, a shelter provider, another school district, an involved agency or a case manager.

(c) The district board of education identified as the district of residence in accordance with N.J.S.A. 18A:7B-12 for a homeless child shall be the district of residence for as long as the parent remains homeless.

6A:17-2.5 Designation of district liaisons and their responsibilities

(a) The chief school administrator of each school district shall identify a district liaison for the education of homeless children. The district liaison shall:

1. Facilitate communication and cooperation between the district of residence and the district where the homeless child is temporarily residing; and

2. Develop procedures to ensure that a homeless child temporarily residing in the district is enrolled and attending school pursuant to N.J.A.C. 6A:17-2.6.

(b) When a homeless child is living temporarily in a school district, the district liaison, upon receiving notification from the parent, the Department of Human Services, a shelter director, an involved agency, or a case manager, shall notify the liaison of the district of residence within 24 hours of the notification.

(c) Upon notification of the need for enrollment of a homeless child, the liaison in the district of residence shall coordinate enrollment procedures immediately based upon the best interest of the child pursuant to N.J.A.C. 6A:17-2.6(b).

6A:17-2.6 District enrollment

(a) The chief school administrator of the district of residence or designee shall decide in which district the homeless child shall be enrolled as follows:

1. To continue the homeless child's education in the school district of last attendance if the district of last attendance is not the district of residence;

2. To enroll the homeless child in the district of residence; or

3. To enroll the homeless child in the school district where the child is temporarily living.

(b) The chief school administrator of the district of residence shall decide the district of enrollment of a homeless child based on what is determined to be in the best interest of the child after considering:

1. The continuity of the child's educational program;

2. The preference of the parent as to where the child should attend school;

3. The eligibility of the child for special instructional programs, including, but not limited to, bilingual, gifted and talented, special education, early childhood and vocational programs; and

4. The distance, travel time, and safety factors in coordinating transportation services from the temporary residence to the school.

(c) The chief school administrator of the district of residence shall determine the child's district enrollment in a timely manner after consultation with the parent as follows:

1. Enrollment decisions shall be made within three school days of notification of the need for enrollment. When the decision is made, the child shall be enrolled immediately.

2. Consultation with the parent regarding the enrollment decision and the right to appeal that decision shall be documented in writing.

(d) When a decision is made to enroll the child in a district other than the district of residence, the chief school administrator of the district of residence shall forward to the new district all relevant school and health records. When the parent is homeless due to conditions of domestic violence, the transfer of student records shall be subject to the provisions of N.J.A.C. 6:3-6.

(e) When a homeless child with educational disabilities is enrolled in a district other than the district of residence, the child shall be placed in a program consistent with the goals and objectives of the child's individualized educational program. Within 30 days after placement, the district where the child is placed shall review and revise the individualized educational program pursuant to N.J.A.C. 6A:14.

(f) When the district of residence for a homeless child cannot be determined, the chief school administrator of the district in which the child is temporarily residing shall enroll the child immediately in the district of temporary residence or the district of last attendance.

6A:17-2.7 Parental rights

Unless parental rights have been terminated by a court of competent jurisdiction, the parent retains all rights under this subchapter.

6A:17-2.8 Disputes and appeals

(a) When a dispute occurs regarding the determination of homelessness, the chief school administrators of the involved district(s) or the parent(s) of the child shall immediately notify the county superintendent of schools, who shall decide the status of the child within two working days. If a dispute remains between the parent and the involved district(s) following the county superintendent's determination, the parent or the involved board(s) of education may appeal to the Commissioner of Education for determination pursuant to N.J.A.C. 6A:3.

(b) When a district designated as the district of residence disputes such designation, or where no designation can be agreed upon by the involved districts, the chief school administrators of the involved districts shall immediately notify the county superintendent of schools who shall make a determination within two working days. A district disputing the county superintendent's determination may appeal to the Department of Education pursuant to N.J.A.C. 6A:23-5.2(d), (e) and (f).

(c) When a dispute occurs regarding the determination of the district of enrollment made by the district of residence, the chief school administrator of the district of residence shall immediately notify the county superintendent of schools. The county superintendent shall determine within two working days where the child shall be enrolled based on the child's best interest pursuant to N.J.A.C. 6A:17-2.6(b).

1. If the county superintendent's decision is disputed, the Department of Education shall provide for mediation as follows:

- i. The request shall be made to the Department of Education in writing;
- ii. Requests for mediation shall cite the issues in dispute and the relief sought;
- iii. A mediation conference shall be conducted within five school days after the request is made at a time and place reasonably convenient to all parties in the dispute; and
- iv. If the mediation does not result in agreement, appeal may be made to the Commissioner of Education pursuant to N.J.A.C. 6A:3.

(d) Any dispute or appeal shall not delay the homeless child's immediate entrance into school. The homeless child shall be enrolled in the district designated by the county superintendent pending resolution of the dispute or appeal.

(e) Disputes and appeals involving the services provided to a homeless child with educational disabilities shall be made pursuant to N.J.A.C. 6A:14.

6A:17-2.9 Tuition

(a) When the homeless child is enrolled in a district other than the district of residence, the district of residence shall pay the costs of tuition for the child to that district pursuant to N.J.S.A. 18A:38-19 and N.J.A.C. 6A:23-3.1.

(b) The district of residence shall list the child on its annual Application for State School Aid (ASSA) pursuant to N.J.S.A. 18A:7F-33 for as long as the parent remains homeless and the child is enrolled in another school district.

(c) If the district of residence cannot be determined for a homeless child or if the district of residence is outside of the State, the State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12(d). The State shall pay the tuition to the school district in which the child is currently enrolled for as long as the child and his or her parent remain homeless.

1. When the State assumes fiscal responsibility for the tuition of a homeless child, the State shall pay to the district in which the child is enrolled the appropriate T & E amount, pursuant to N.J.S.A. 18A:7F-3, and any appropriate additional cost factor for special education, pursuant to N.J.S.A. 18A:7F-19.

SUBCHAPTER 3. EDUCATIONAL PROGRAMS FOR STUDENTS IN STATE FACILITIES

6A:17-3.1 Scope

These rules shall apply to all educational programs provided by the Departments of Corrections and Human Services and the Juvenile Justice Commission in accordance with N.J.S.A. 18A:7B-1. Educational programs and services shall be provided to those students in State facilities ages five through 20 and for students with educational disabilities ages three through 21. Programs and services shall be provided to students in State facilities who do not hold a high school diploma or who are not enrolled in a General Educational Development or adult education program as defined in N.J.A.C. 6:30-2 or a college degree program.

6A:17-3.2 Definitions

The following words and terms, when used in this subchapter, will have the following meanings unless the context clearly indicates otherwise:

“District of residence” means the district in which the parent or guardian with whom the student lived prior to placement in a State facility currently resides pursuant to N.J.S.A. 18A:7B-12.

“State agency” means the New Jersey Department of Human Services, the New Jersey Department of Corrections or the New Jersey Juvenile Justice Commission as identified in N.J.S.A. 18A:7B-1.

“State facility” means residential and day programs operated by or contracted with the Department of Human Services, the Department of Corrections or the Juvenile Justice Commission.

6A:17-3.3 Educational program objectives and requirements

(a) Each State agency shall develop educational programs to complement the primary mission of that State agency and provide educational opportunities that meet the identified needs of students in each State facility. These programs shall be delivered through traditional or individualized education strategies. Individualized programs, which allow high school credit to be awarded through alternative learning experiences, shall be provided in accordance with program completion authorized in N.J.A.C. 6A:8-5.1(a)1ii.

(b) Each State agency shall utilize the following program objectives for achieving the legislative goal as stated in N.J.S.A. 18A:7B-1 et seq. of providing a thorough and efficient education and as the framework for developing educational experiences which meet the specialized needs of all students in each State facility under the State agency’s jurisdiction. The educational programs as provided for under the State Facilities Education Act shall:

1. Provide instruction in the Core Curriculum Content Standards and assist students in working toward fulfilling the high school graduation requirements contained in N.J.A.C. 6A:8-5.1; and
2. Provide relevant job training and enhance occupational competencies through vocational education programs where appropriate, pursuant to N.J.A.C. 6:43.

(c) Attendance in educational programs is compulsory for all students, except for a student aged 16 or above who may explicitly waive this right. For a student between the ages 16 and 18, a waiver is not effective unless accompanied by consent from a student’s parent or guardian. Such a waiver may be revoked at any time by the former student.

(d) All education programs, with the exception of home instruction pursuant to N.J.A.C. 6A:16-9.1, shall be available at least four hours per day, five days a week, 220 days each year.

(e) The actual number of days a student must attend the educational program shall be determined by the individualized program plan under program completion pursuant to N.J.A.C. 6A:8-5.1(a)1ii and the individualized education program for students with educational disabilities in accordance with N.J.A.C. 6A:14-3.7.

(f) Each State agency shall ensure that home instruction is provided pursuant to N.J.A.C. 6A:16-9.1.

(g) Each State agency shall ensure that activities are not scheduled that conflict with educational programs.

(h) Each State agency shall ensure that students are not excused from attending educational programs except for reasons of illness, religious observance, court appearance or other compelling personal circumstances.

(i) Each State agency shall ensure that all students in that agency’s State facilities shall comply with all rules established by the facility pursuant to N.J.S.A. 18A:37-1 and 18A:37-2.

(j) Each State agency shall establish procedures for continued education in a different setting in cases where a student is guilty of ongoing defiance of the rules, and the student’s continued participation in the program is disruptive to the ongoing educational process.

(k) For a student in a State facility who has an identifiable district of residence as defined by N.J.S.A. 18A:7B-12, the district board of education shall grant a State endorsed diploma in accordance with N.J.A.C. 6A:8-5.1 and 6A:14-4.12.

(l) For a student in a State facility who does not have an identifiable district of residence as defined by N.J.S.A. 18A:7B-12, the applicable State agency must certify that the student has successfully completed all graduation requirements contained in N.J.A.C. 6A:8-5.1 in order that the Commissioner of Education may issue a State endorsed diploma.

6A:17-3.4 Students with educational disabilities

(a) Each State agency shall ensure that all students with educational disabilities in that State agency’s State facilities are provided a free and appropriate public education as set forth under the Individuals with Disabilities Education Act (P.L. 101-476, as amended by P.L. 102-119) and provide special education and related services as stipulated in the individualized education plan (IEP) in accordance with the rules governing special education at N.J.A.C. 6A:14.

1. The class size of special education programs serving solely students with educational disabilities shall be in accordance with N.J.A.C. 6A:14-4.

6A:17-3.5 Staffing and class size

(a) Each State agency, either independently or through contractual agreements, shall employ the educational personnel required to ensure the provision of programs and services pursuant to this subchapter.

(b) The Office of Education in each State agency shall, with the approval of the Department of Education, ensure that all educational personnel possess the appropriate certification endorsement issued by the State Board of Examiners pursuant to N.J.S.A. 18A:6-38.

(c) Each State agency shall maintain the certification for all educational staff on file at the respective Office of Education and at the appropriate program site.

(d) The Office of Education in each State agency shall prepare and submit a plan for the required professional development for all teachers and educational services personnel employed by that State agency consistent with the requirements of N.J.A.C. 6:11-13.

(e) Each State agency shall ensure the provision of classes for general education students that shall not exceed 12 students.

1. A State agency may request exceptions to this requirement as part of the annual approval process required by N.J.A.C. 6A:17-3.8(c).

2. The Department of Education shall grant exceptions on a case-by-case basis using the following criteria:

i. The requested exception justifies the need for an alternate program structure;

ii. The requested exception demonstrates that the specialized needs of the students served will continue to be met; and

iii. The requested exception insures the necessary supervision, security, and safety of the students served.

6A:17-3.6 Facilities

(a) Each State agency shall ensure that all buildings and facilities used for educational programs comply with the provisions of N.J.A.C. 6:22, where applicable.

(b) Each State agency shall ensure that all educational programs are provided in locations separate from sleeping areas, except where appropriate for instructional or medical reasons.

6A:17-3.7 Student records and reports

(a) When a student is placed in a State facility, the identified district of residence shall provide the State facility with the student's educational records, district graduation requirements, attendance standards and the name of a contact person within 10 days of notification of admission.

(b) Each State agency shall maintain student records in accordance with N.J.A.C. 6:3-2. All educational records shall be kept in files separate from court and other non-educational records required to be safeguarded from public inspection pursuant to N.J.S.A. 2A:4-65.

(c) Each State agency shall ensure that the district of residence is to be notified of their students' progress toward meeting local and State high school graduation requirements pursuant to N.J.A.C. 6A:8-5.1 at the marking period intervals established in the agency's school calendar.

(d) Each State agency shall ensure the transfer of educational records and a final progress report for all students exiting a State facility to the district of residence within 10 days, in order to ensure full and appropriate credit for work completed. The report shall include a designated contact person and the following information which is necessary to formulate an appropriate educational program and ensure that credit for work completed is granted:

1. Statewide assessment and diagnostic findings;

2. Credit earned towards high school graduation requirements pursuant to N.J.A.C. 6A:8-5.1;

3. Grade level equivalent;

4. Vocational training experience;

5. Individualized Program Plan (IPP) pursuant to N.J.A.C. 6A:16-8.2; and

6. Individualized Education Program (IEP) for students with educational disabilities pursuant to N.J.A.C. 6A:14-3.7.

6A:17-3.8 Approval process for funding

(a) The approval and funding of educational programs shall be in accordance with N.J.S.A. 18A:7B-2 of the State Facilities Education Act of 1979, as amended by the Comprehensive Educational Improvement and Financing Act of 1996, N.J.S.A. 18A:7F-1 et seq.

(b) Each State agency shall submit annually to the Department of Education, the resident enrollment of students in that agency's State facility education programs on the last school day prior to October 16 of the prebudget year.

(c) By December 15 of each prebudget year, pursuant to N.J.S.A. 18A:7F-1 et seq., each State agency shall submit a detailed education program plan and budget to the Department of Education for approval for all programs and services under its jurisdiction on a form prescribed and provided by the Commissioner of Education. The plan shall include, at a minimum, a program description, staffing patterns and facility level budget information.

(d) The Commissioner of Education, prior to March 1 of the prebudget year, shall notify the Commissioner or the

Executive Director of each State agency, of the entitlement for educational programs for the following fiscal year.

(e) The entitlement shall be forwarded to each State agency in two payments, 90 percent after July 1, and 10 percent after April 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the Commissioner or the Executive Director of each State agency. These payments may be withheld pursuant to N.J.S.A. 18A:7B-5, as amended by the Comprehensive Educational Improvement and Financing Act of 1996, N.J.S.A. 18A:7F-1 et seq.

(f) Each State agency shall use the entitlement to support their educational programs in accordance with the provisions of N.J.S.A. 18A:7B-4 and requirements established in this subchapter.

(g) Each State agency shall submit requests for revisions to the approved education program plan and budget, pursuant to N.J.S.A. 18A:7F-1 et seq., to the Commissioner of Education. The following revisions require prior written approval from the Department of Education before implementation:

1. Budget category expenditure variances which exceed \$10,000 or 10 percent of the approved amount in any budget line;
2. Any additions or deletions to approved contracts for services; and

3. Any additions, deletions or substitutions of approved amounts for the purchase of instructional or non-instructional equipment.

(h) Each revision under (g) above shall be fully documented and contain a certification from the Office of Education in that State agency and the Commissioner or Executive Director of that State agency, that the revision is essential to the education program.

(i) The expenditure of funds shall be available for audit by the Department of Education and fully documented in the following manner:

1. Salary expenditures shall be supported by time and activity reports for each budgeted position, supplemented with a current job description;

2. All expenditures other than salary shall be supported by a vendor's invoice, a verification of receipt, and evidence that the service or supply is utilized at the program level; and

3. All documentation shall be retained for audit for a minimum of five years after the completion of the fiscal year. If an audit has been started or notice received of an audit to be started, all supporting documentation will be retained until the audit process is concluded.

(j) The Department of Education shall review all educational programs provided by each State agency for compliance with the rules established in this subchapter and adherence to the approved education program plan and budget, pursuant to N.J.S.A. 18A:7B-5.