

CHAPTER 17**EDUCATION FOR HOMELESS CHILDREN AND STUDENTS IN STATE FACILITIES****Authority**

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

Source and Effective Date

R.2007 d.146, effective April 11, 2007.
See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 6A:17, Education for Homeless Children and Students in State Facilities, expires on October 8, 2014. See: 46 N.J.R. 729(a).

Chapter Historical Note

Chapter 17, Students at Risk of Not Receiving a Public Education, was adopted as new rules by R.2002 d.56, effective February 19, 2002. See: 33 N.J.R. 3603(a), 34 N.J.R. 915(a).

Chapter 17, Students at Risk of Not Receiving a Public Education, was readopted as R.2007 d.146, effective April 11, 2007. As a part of R.2007 d.146, Chapter 17, Students at Risk of Not Receiving a Public Education, was renamed Education for Homeless Children and Students in State Facilities, effective May 7, 2007. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 17, Education for Homeless Children and Students in State Facilities, was scheduled to expire on April 11, 2014. See: 43 N.J.R. 1203(a).

CHAPTER TABLE OF CONTENTS**SUBCHAPTER 1. GENERAL PROVISIONS****6A:17-1.1 Purpose****SUBCHAPTER 2. EDUCATION OF HOMELESS CHILDREN****6A:17-2.1 Scope****6A:17-2.2 Definitions****6A:17-2.3 Determination of homeless status****6A:17-2.4 Responsibilities of the school district of origin****6A:17-2.5 Designation of school district liaisons and their responsibilities****6A:17-2.6 School district enrollment****6A:17-2.7 Parental rights****6A:17-2.8 Disputes and appeals****6A:17-2.9 Tuition****SUBCHAPTER 3. EDUCATIONAL PROGRAMS FOR STUDENTS IN STATE FACILITIES****6A:17-3.1 Scope****6A:17-3.2 Definitions****6A:17-3.3 Educational program objectives and requirements****6A:17-3.4 Students with disabilities****6A:17-3.5 Staffing and class size****6A:17-3.6 Facilities****6A:17-3.7 Student records and reports****6A:17-3.8 Approval process for funding****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. Nothing in this chapter shall limit the educational rights of homeless children and youth or school district responsibilities under Subtitle VII-B of the Stewart B. McKinney-Vento Homeless Assistance Act (42 U.S.C. §§ 11431 et seq).

Amended by R.2004 d.185, effective May 3, 2004.

See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

Added the second sentence.

Case Notes

Initial Decision (2007 N.J. AGEN LEXIS 747) adopted, which concluded that parent who failed to appear and present proof that she and her children resided in the district had failed to demonstrate children's entitlement to attend schools in the district and that disenrollment of children from the schools and reimbursement to the Board of \$2,404.42 in tuition was required. Commissioner made no findings as to suggestion family might be homeless but pointed out that if petitioner claimed to be so, parties were required to follow the procedures set forth in N.J.A.C. 6A:17-2.1. S.M. ex rel. S.M. v. Bd. of Educ. of Bloomfield, OAL Dkt. No. EDU 9962-07, 2008 N.J. AGEN LEXIS 272, Commissioner's Decision (January 11, 2008).

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:

"Enroll" or "enrollment" means attending classes and participating fully in school activities.

"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.

"Immediate" or "immediately" means at the instant that the need for placement is made known.

"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.

"School 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.

"School district of origin" means the school district in which the parent last resided prior to becoming homeless.

"Unaccompanied youth" means a youth not in the physical custody of a parent or guardian at the time of enrollment.

Amended by R.2004 d.185, effective May 3, 2004.

See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

In "District of origin", substituted "origin" for "residence"; added "Enroll" and "Immediate".

Amended by R.2005 d.257, effective August 1, 2005.

See: 37 N.J.R. 848(a), 37 N.J.R. 2864(a).

Added "Unaccompanied youth".

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Deleted definitions "District liaison for the education of homeless children" and "District of origin"; and added definitions "School district liaison for the education of homeless children" and "School district of origin".

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 including mobile homes;
- ii. Tents or other temporary shelters;
- iii. Temporary shelters provided to migrant workers and their children on farm sites;

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; or

4. Any temporary location wherein children and youth are awaiting foster care placement.

Amended by R.2004 d.185, effective May 3, 2004.

See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

In (a), substituted "including" for "excluding" in 2i and added 4.

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 25) adopted, which determined that a child was homeless during the period of time mother and child lived in mother's beauty salon. The beauty salon is a private place not designated for or ordinarily used as a regular sleeping accommodation within the meaning of N.J.A.C. 6A:17-2.3(a)2. S.J. ex rel. V.J. v. Board of Educ. of South Orange-Maplewood School Dist., OAL Dkt. No. EDU 5656-07, 2008 N.J. AGEN LEXIS 666, Commissioner's Decision (March 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 25) adopted, which determined that a child was homeless during the period of time mother and child remained with mother's friend from approximately August to November. Under the circumstances, mother and child were temporarily residing with a friend or relative out of necessity because they lacked a permanent residence of their own within the meaning of N.J.A.C. 6A:17-2.3(a)3. S.J. ex rel. V.J. v. Board of Educ. of South Orange-Maplewood School Dist., OAL Dkt. No. EDU 5656-07, 2008 N.J. AGEN LEXIS 666, Commissioner's Decision (March 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 25) adopted, which determined that a child was homeless during the three-month period parent and child lived with parent's mother. Parent and child were residing temporarily at the home of a relative out of necessity because they lacked a regular or permanent residence of their own within the meaning of N.J.A.C. 6A:17-2.3(a)3. This is not to say that any stay with a relative means that the parent or child is homeless. If the stay lasts for an extended time, it cannot be described as temporary. But in this instance, the stay of a few months was temporary in nature. S.J. ex rel. V.J. v. Board of Educ. of South Orange-Maplewood School Dist., OAL Dkt. No. EDU 5656-07, 2008 N.J. AGEN LEXIS 666, Commissioner's Decision (March 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 25) adopted, which determined that a child was homeless during the period from January or February to April of the same year when mother and child stayed with mother's friend and rented space in the attic. In view of the shortness of the stay, it would be accurate to characterize mother's circumstances as temporarily residing with a friend out of necessity because she lacked a regular or permanent residence of her own within the meaning of N.J.A.C. 6A:17-2.3(a)3. S.J. ex rel. V.J. v. Board of Educ. of South Orange-Maplewood School Dist., OAL Dkt. No. EDU 5656-07, 2008 N.J. AGEN LEXIS 666, Commissioner's Decision (March 3, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 25) adopted, which determined that when mother rented her own apartment with a security deposit and temporary rental assistance provided by the county division of welfare, as the tenant in her own apartment, mother was no longer homeless within the meaning of N.J.A.C. 6A:17-2.3(a). With no other residence, mother and child were domiciled in a city outside of the respondent district. S.J. ex rel. V.J. v. Board of Educ. of South Orange-Maplewood School Dist., OAL Dkt. No. EDU 5656-07, 2008 N.J. AGEN LEXIS 666, Commissioner's Decision (March 3, 2008).

Where a student had been assigned to the KidsPeace program in Pennsylvania, and about the same time, the student's father was evicted and moved in with his parents, the Department of Education correctly assigned costs to the school district where the student lived when he was placed in KidsPeace, and from which the father was evicted, because the costs are to be assigned to the last district where the student resided before placement, and there was no clear evidence in the record of the date of eviction, nor did the record indicate any intent on the part of the student's father to remain with his parents; a school district challenging a residency determination bears the burden of proving the Department of Education's determination was arbitrary, capricious, or without merit. Bd. of Educ. of Twp. of Delaware v. N.J. Dep't of Educ., OAL Dkt. No. EDU 08011-05S, 2006 N.J. AGEN LEXIS 644, Commissioner's Decision (May 10, 2006).

6A:17-2.4 Responsibilities of the school district of origin

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

1. Determine the school 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 school 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 school district of origin 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 or the Department of Children and Families, a shelter provider, another school district, an involved agency or a case manager.

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

Amended by R.2004 d.185, effective May 3, 2004.

See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

Substituted "origin" for "residence" and "resident" throughout.

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Section was "Responsibilities of the district of origin". Inserted "school" preceding "district" throughout; and in (b), inserted "or the Department of Children and Families".

Case Notes

Where parent had purchased a trailer home and leased land for it in Monroe Township School District but a certificate of occupancy had not yet been secured due to code deficiencies, the Monroe school district was not responsible for the child's education; instead, Berlin Township School District, the school district where the parent and child last resided prior to becoming homeless, was responsible for the education of the child "for as long as the parent remains homeless" under N.J.A.C. 6A:17-2.4. C.P. ex rel. S.P. v. Berlin Twp. Bd. of Educ., OAL Dkt. No. EDS 4110-06, 2006 N.J. AGEN LEXIS 369, Emergent Relief Decision (June 2, 2006).

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

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

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

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

3. Ensure that homeless families, children and youth receive educational services for which such families, children and youth are eligible, including Head Start and Even Start programs and preschool programs administered by the local education agency, and referrals to health care

services, dental services, mental health services, and other appropriate services;

4. Inform parents and guardians of homeless children and youth of the educational and related opportunities available to their children and ensure that they are provided with meaningful opportunities to participate in the education of their children;

5. Ensure that public notice of the educational rights of homeless children and youth is disseminated where such children receive services, such as schools, family shelters and soup kitchens;

6. Ensure that enrollment disputes are mediated pursuant to N.J.A.C. 6A:17-2.8;

7. Ensure that the parent or guardian of a homeless child or youth, or any unaccompanied youth, is fully informed of all transportation services, including transportation to the school district of origin, and is assisted in accessing transportation to the school that is selected under N.J.A.C. 6A:17-2.6;

8. Assist the parent or guardian to obtain the homeless child or youth's medical records or required immunizations; and

9. Assist an unaccompanied youth to ensure he or she is enrolled and is receiving all the services pursuant to this section.

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

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

Amended by R.2004 d.185, effective May 3, 2004.

See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

In (a), added 3 through 8; substituted "origin" for "residence" throughout.

Amended by R.2005 d.257, effective August 1, 2005.

See: 37 N.J.R. 848(a), 37 N.J.R. 2864(a).

At the end of (a)7, deleted "and", in (a)8, substituted "; and" for ":", and added paragraph 9.

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Section was "Designation of district liaisons and their responsibilities". Inserted "school" preceding "district" throughout; and in (b), inserted "or the Department of Children and Families".

6A:17-2.6 School district enrollment

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

1. To the extent feasible, enroll the homeless child in the school of origin except when doing so is contrary to the wishes of the homeless child's parent or guardian;

2. To continue the homeless child's education in the school district of last attendance if the school district of last attendance is not the school district of origin; or

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

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

1. To the extent feasible, enrollment of the homeless child in the school district of origin, except when doing so is contrary to the wishes of the child's parent or guardian;

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

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 school district of origin or designee shall determine the child's school district enrollment immediately after consultation with the parent as follows:

1. Enrollment decisions shall be made immediately upon notification of the need for enrollment. When the decision is made, the child shall be enrolled immediately. If a dispute arises regarding enrollment of a homeless child, that homeless child shall be immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute pursuant to N.J.A.C. 6A:17-2.8.

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

3. A decision to enroll a homeless child in a school other than the school of origin or the school requested by the parent or guardian shall be explained, in writing, and provided to the parent or guardian.

(d) When a decision is made to enroll the child in a school district other than the school district of origin, the chief school administrator of the school district of origin or designee shall forward to the new school district all relevant school and health records, consistent with the provisions of N.J.A.C. 6A:32.

(e) When a homeless child with disabilities is enrolled in a school district other than the school district of origin, 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 school district where the child is placed shall review and revise the individualized educational program pursuant to N.J.A.C. 6A:14, Special Education.

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

(g) The school selected pursuant to this chapter shall immediately enroll the homeless child or youth, even if the homeless child or youth is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.

(h) Enrollment in the school district of origin or the school district where the child is temporarily living shall continue for the duration of homelessness, including when a family becomes homeless between academic years, and also for the remainder of the academic year if the homeless child becomes permanently housed during the academic year.

(i) The enrolling school shall immediately request a copy of the student's academic and medical records from the school last attended.

Amended by R.2004 d.185, effective May 3, 2004.

See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

Rewrote the section.

Amended by R.2005 d.257, effective August 1, 2005.

See: 37 N.J.R. 848(a), 37 N.J.R. 2864(a).

Added (i).

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Section was "District enrollment". Inserted "school" preceding "district" throughout; in (d), inserted ", consistent with the provisions of N.J.A.C. 6A:32" at the end of the first sentence and deleted the last sentence; and in (e), deleted "educational" preceding "disabilities", and inserted ", Special Education".

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 school district(s) or designee(s) or the parent(s) of the child shall immediately notify the county superintendent of schools, who shall decide the status of the child immediately. If a dispute remains between the parent and the involved school district(s) following the county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner of Education for

determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

(b) When a school district designated as the school district of origin disputes such designation, or where no designation can be agreed upon by the involved school districts, the chief school administrators or designee(s) of the involved school districts shall immediately notify the county superintendent of schools who shall make a determination immediately. A school 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 school district of enrollment made by the school district of origin, the chief school administrator of the school district of origin or designee shall immediately notify the county superintendent of schools. The county superintendent shall immediately determine 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, Controversies and Disputes.

(d) Any dispute or appeal shall not delay the homeless child's immediate entrance into school. The homeless child shall be enrolled in the school in which enrollment is sought, pending resolution of the dispute or appeal.

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

Amended by R.2004 d.185, effective May 3, 2004.

See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

Rewrote the section.

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Inserted "school" preceding "district(s)", "district" and "districts" throughout; in (a) and (c)iv, inserted "; Controversies and Disputes"; in (c), at the end of the first sentence, substituted "schools" for "school"; and in (e), deleted "educational" preceding "disabilities" and inserted "; Special Education".

Case Notes

Although the parent failed to appear at an OAL hearing to determine whether her child was entitled to remain in the school district following allegations that the family no longer met the residency requirements, an order dismissing the parent's appeal and granting the district tuition costs for educating the child was reversed and the matter was remanded, especially in light of the parent's assertion — however incredible — that she did not receive notice of the scheduled hearing, as well as the suggestion that the student may have been the child of a homeless family and, consequently, entitled to attend school in the Board's district. *L.E.H. ex rel. Z.H. v. Bd. of Educ. of West Orange*, OAL Dkt. No. EDU 3787-09, 2009 N.J. AGEN LEXIS 919, Remand Decision (July 2, 2009).

Even if a grandmother/legal guardian failed to show that she was domiciled in the District, the student would have possessed entitlement to a free public education in the schools of Woodbridge Township by virtue of the fact that during the period at issue she qualified as homeless; the grandmother's home was destroyed by fire and the family was displaced from their permanent housing. *B.F.-H. ex rel. A.C. v. Bd. of Educ. of Woodbridge Twp.*, OAL Dkt. No. EDU 4848-08, 2009 N.J. AGEN LEXIS 632, Final Decision (February 9, 2009).

6A:17-2.9 Tuition

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

(b) The school district of origin 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 school district of origin cannot be determined for a homeless child or if the school district of origin 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 school 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.

Amended by R.2004 d.185, effective May 3, 2004.
See: 35 N.J.R. 5469(a), 36 N.J.R. 2195(b).

Substituted "origin" for "residence" throughout.
Amended by R.2007 d.146, effective May 7, 2007.
See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Inserted "school" preceding "district" throughout.

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 Department of Corrections, the Department of Children and Families, the Department of 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 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.

Amended by R.2007 d.146, effective May 7, 2007.
See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Substituted "Department of Corrections, the Department of Children and Families, the Department of" for "Departments of Corrections and", and deleted "educational" preceding "disabilities".

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:

"School district of residence" means the school 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, the New Jersey Department of Children and Families, 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, the Department of Children and Families or the Juvenile Justice Commission.

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Substituted definition "School district of residence" for definition "District of residence"; in definition "School district of residence" inserted "school" preceding "district"; in definition "State agency", inserted "the New Jersey Department of Children and Families"; and in definition "State facility", inserted "the Department of Children and Families".

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)lii.

(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. 6A:19, Career and Technical Education Programs and Standards.

(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:16-10.1, 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)lii and the individualized education program for students with 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:16-10.1.

(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 school 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:14-4.11.

(l) For a student in a State facility who does not have an identifiable school 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.

Amended by R.2005 d.257, effective August 1, 2005.

See: 37 N.J.R. 848(a), 37 N.J.R. 2864(a).

In (b)2, substituted "6A:19" for "6:43".

Amended by R.2006 d.315, effective September 5, 2006.

See: 38 N.J.R. 2253(a), 38 N.J.R. 3530(b).

In (k), substituted "4.11" for "4.12".

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

In (b)2, inserted "Career and Technical Education Programs and Standards"; in (d), (f) and (k), updated N.J.A.C. references; in (e), deleted "educational" preceding "disabilities"; and in (k) and (l), inserted "school" preceding "district".

6A:17-3.4 Students with disabilities

(a) Each State agency shall ensure that all students with 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. 108-446) and provide special education and related services as stipulated in the individualized education program (IEP) in accordance with the rules governing special education at N.J.A.C. 6A:14, Special Education.

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

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

Section was "Students with educational disabilities". In the introductory paragraph of (a), deleted "educational" preceding "disabilities", substituted "108-446" for "102-119" and "program" for "plan", and inserted "Special Education"; and in (a)1, deleted "educational" preceding "disabilities".

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. 6A:9C-3 and 6A:9B-14.

(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.

Amended by R.2005 d.257, effective August 1, 2005.

See: 37 N.J.R. 848(a), 37 N.J.R. 2864(a).

In (d), substituted "6A:9-15 and 16" for "6:11-13".

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

In (d), updated N.J.A.C. references.

Administrative change.

See: 46 N.J.R. 1743(a).

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. 6A:26, Educational Facilities, 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.

Amended by R.2005 d.257, effective August 1, 2005.

See: 37 N.J.R. 848(a), 37 N.J.R. 2864(a).

In (a), substituted "6A:26" for "6:22".

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

In (a), inserted ", Educational Facilities".

6A:17-3.7 Student records and reports

(a) When a student is placed in a State facility, the identified school 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. 6A:32-7. 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:4A-60.

(c) Each State agency shall ensure that the school 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 school 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:16-9.2(a)3; and
6. Individualized Education Program (IEP) for students with disabilities pursuant to N.J.A.C. 6A:14-3.7.

Amended by R.2007 d.146, effective May 7, 2007.

See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

In (a), (c) and the introductory paragraph of (d), inserted "school" preceding "district"; in (b) and (d)5, updated N.J.A.C. references; and in (d)6, deleted "educational" preceding "disabilities".

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 Edu-

cation 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 evi-

dence 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.