

CHAPTER 5
PROVISIONS FOR THE EDUCATION
OF HOMELESS CHILDREN
AND YOUTH

Authority

N.J.S.A. 18A:38-1 and 18A:7B-12.

Source and Effective Date

R.1999 d.296, effective August 5, 1999.
See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

Executive Order No. 66(1978) Expiration Date

Chapter 5, Provisions for the Education of Homeless Children and Youth, expires on August 5, 2004.

Chapter Historical Note

Chapter 5, Commissioner, was adopted as R.1990 d.561, effective October 22, 1990. See: 22 N.J.R. 3484(a). Pursuant to Executive Order No. 22(1994), the expiration date of Chapter 5 was extended from October 22, 1995 to April 22, 1997. See: 26 N.J.R. 3783(a), 26 N.J.R. 3942(a). Pursuant to Executive Order No. 66(1978), Chapter 5, Commissioner, expired on April 22, 1997.

Chapter 5, Provisions for the Education of Homeless Children and Youth, was originally codified in Chapter 3 of Title 6 as Subchapter 8, Provisions for the Education of Homeless Children and Youth. Subchapter 8 was adopted as new rules by R.1993 d.272, effective June 7, 1993. See: 25 N.J.R. 1095(a), 25 N.J.R. 2249(a).

Pursuant to Executive Order No. 66(1978), Subchapter 8, Provisions for the Education of Homeless Children and Youth, was readopted as R.1999 d.296, effective August 5, 1999, and was recodified as Chapter 5, Provisions for the Education of Homeless Children and Youth, by R.1999 d.296, effective September 7, 1999. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

6:5-1.1 Purpose

The purpose of this chapter is to establish uniform State-wide policies and procedures for ensuring that homeless children and youth have access to a free and appropriate public education. Specific rules have been established to determine the educational placement of these students and to respond to appeals made by parents or other parties.

These rules will implement N.J.S.A. 18A:38-1 and 18A:7B-12.

Amended by R.1999 d.296, effective September 7, 1999.
See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

Substituted a reference to this chapter for a reference to this subchapter.

6:5-1.2 Definitions

The following words and terms, when used in this chapter, 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 timely educational placement of homeless children and youth.

“District of residence” for a homeless child whose parent(s) or guardian(s) temporarily move from one school district to another as the result of being homeless pursuant to N.J.S.A. 18A:38-1, N.J.A.C. 6:20-5.3(g) and N.J.S.A. 18A:7B-12 means the district in which the parent(s) or guardian(s) last resided prior to becoming homeless.

“Homeless” child or youth means one who lacks a fixed, regular, and adequate residence.

“Parent” means the natural parent(s) or legal guardian(s), foster parent(s), surrogate parent(s), person acting in the place of a parent such as the person with whom the pupil legally resides and/or a person legally responsible for the pupil’s welfare. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent(s) retains all rights under this chapter.

Amended by R.1999 d.296, effective September 7, 1999.
See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

Substituted references to this chapter for references to this subchapter in the introductory paragraph and in “Parent”.

6:5-1.3 Determination of homelessness

(a) A child or youth shall be considered homeless for purposes of this program if he or she resides in any of the following:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including:

- i. Welfare hotels;
- ii. Congregate shelters;
- iii. Transitional housing for families; and
- iv. Transitional housing for the mentally ill;

2. An institution that provides a temporary residence for individuals intended to be institutionalized; or

3. A public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings.

(b) Additionally, a child or youth shall be considered homeless if he or she is:

1. Living with a parent in a domestic violence shelter;
2. A runaway living in a shelter;
3. A school-aged mother residing in a home for adolescent mothers;
4. Sick or abandoned and residing in a hospital and would otherwise be released if he or she had a permanent residence;
5. Abandoned and therefore has no permanent residence;
6. The child of a homeless family which is out of necessity living with relatives or friends; or
7. The child of a migrant family which lacks adequate housing.

(c) When a dispute occurs regarding the determination of homelessness, the involved districts shall immediately notify the county superintendent of schools, who shall decide the status of the child within 48 hours.

Case Notes

Student whose family was evicted from residence within school district was not homeless where student and her mother had established fixed residence with relatives in neighboring community. L.C. on Behalf of her Minor Child B.C. v. Board of Education of Branchburg, 96 N.J.A.R.2d (EDU) 1002.

Parent who alleged that her family was homeless and requested that her child be allowed to enroll in local elementary school would have her petition dismissed where parent failed to appear at hearing on matter after being properly noticed. O.O. v. Board of Education of the Bridgewater-Raritan School District, 96 N.J.A.R.2d (EDU) 747.

Student who resided with mother and family friends and who received temporary rental assistance was not homeless. Maurice River Township Board of Education v. Wildwood Board of Education, 93 N.J.A.R.2d (EDU) 895.

6:5-1.4 Responsibilities of the district of residence

(a) The district of residence for a homeless child shall be responsible for the education of the child, shall determine the educational placement after consulting with the parent(s) or guardian(s), shall pay the costs of tuition and transportation when the child attends school in another district, and shall provide transportation when a child attends school in the district of residence while residing in another district.

(b) The determination of a homeless child's district of residence shall be made by the school districts involved as described in N.J.A.C. 6:5-1.5 based upon information received from the Department of Human Services, shelter providers, school districts, involved agencies, case managers or parents.

(c) The school district which has been determined to be the district of residence for a homeless child shall be the district of residence for as long as the parent(s) or guardian(s) remains homeless.

(d) When a dispute occurs regarding the determination of the district of residence, the involved districts shall immediately notify the county superintendent of schools, who will resolve the dispute. When the dispute involves districts in different counties, the county superintendents will work collectively to resolve the dispute. If the county superintendent(s) is unable to resolve the dispute, an appeal may be made to the Assistant Commissioner, Division of Finance, pursuant to N.J.A.C. 6:20-5.3(d), (e), and (f).

(e) When 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 Department of Education shall pay the amount to the school district in which the child is currently enrolled for as long as the parent(s) or guardian(s) remains homeless.

Amended by R.1999 d.296, effective September 7, 1999.

See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

In (b), changed N.J.A.C. reference.

6:5-1.5 Responsibilities of the district liaison

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

1. The liaison shall facilitate communication and cooperation between the district or residence and the district where the homeless child is temporarily residing.

2. The liaison shall develop a system to ensure that any homeless child residing in the district is enrolled and attending school according to the placement options described in N.J.A.C. 6:5-1.6(a).

(b) When a child becomes homeless and is living temporarily in a school district, the liaison of that district, upon receiving notification from the Department of Human Services, shelter directors, involved agencies, case managers, or parent(s) or guardian(s), shall notify the liaison of the district of residence within 24 hours. This procedure shall also apply to those children identified as homeless pursuant to N.J.A.C. 6:5-1.3 and who may not be receiving services through a social service agency.

(c) When the liaison in the district of residence of a homeless child receives notification of the need for educational placement, that person shall coordinate placement procedures immediately based on the best interest of the child and criteria set forth in N.J.A.C. 6:5-1.6(c).

Amended by R.1999 d.296, effective September 7, 1999.
See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).
Changed N.J.A.C. references throughout.

6:5-1.6 Educational placement

(a) The district of residence shall decide the educational placement of the homeless child according to criteria described in this section. The options for placement are:

1. To continue the child's education in the school district of last attendance;
2. To enroll the child in the district of residence if the district of residence is not the district of last attendance; or
3. To enroll the child in the school district where the child is temporarily living.

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

(c) The decision regarding educational placement of a homeless child shall be based on what is in the best interest of the child. The district of residence shall consider the following in the placement decision process:

1. The preference of the parent(s) or guardian(s) as to where the child should attend school;
2. The continuity of the child's educational program with consideration given to the child continuing in the same school, the length of time the child attended a particular school, the time remaining in the school year, graduation requirements and district policies regarding the number of credits needed for graduation, and geographical location where the family plans to seek permanent housing;
3. The eligibility of the child for special instructional programs, such as bilingual, compensatory, gifted and talented, special education and vocational programs; and
4. The distance, travel time, and safety factors in coordinating transportation services from the temporary residence to the school.

(d) When a decision is made to enroll an educationally handicapped homeless child in a district other than the district of residence and an immediate review of the placement options available to implement the pupil's current individualized educational program cannot be conducted, the child shall be placed in a program consistent with the goals and objectives of the current individualized education-

al program for a period not to exceed 30 calendar days. Within this 30 day period, the district of residence must assure that the individualized educational program is reviewed and revised pursuant to N.J.A.C. 6A:14.

(e) The district of residence shall determine the educational placement in a timely manner and only after consultation with the parent(s) or guardian(s) as described below:

1. Placement decisions shall be made by the superintendent of the district of residence or his or her designee within three school days of notification of the need for educational placement. Once the decision is made, the child shall be placed immediately.
2. Consultation with the parent(s) or guardian(s) regarding the placement decision and their right to appeal that decision shall be documented by the superintendent or his or her designee in writing.
3. When there is a dispute regarding the placement decision, the child will be enrolled when the county superintendent determines the educational placement pursuant to N.J.A.C. 6:5-1.7.

(f) When a decision is made to enroll the child in a district other than the district of residence, the district where the child last attended school shall forward to the new district all relevant school and health records. When the parent(s) or guardian(s) is homeless due to conditions of domestic violence, the transfer of pupil records shall be subject to the provisions of N.J.A.C. 6:3-6.

Amended by R.1999 d.296, effective September 7, 1999.
See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).
In (d) through (f), changed N.J.A.C. references.

6:5-1.7 Disputes and appeals

(a) If the parent(s) or guardian(s), involved school district officials, involved agencies, case managers, or shelter providers object to the educational placement decision made by the district of residence, the superintendent or designee of the district of residence shall immediately notify the county superintendent of schools. The county superintendent shall determine the placement of the child within 48 hours based on the child's best interest and the criteria set forth in N.J.A.C. 6:5-1.6(c).

(b) If the parent(s) or guardian(s) or any of the above parties object to the decision of the county superintendent, mediation shall be available through the Department of Education's Office of Education for Homeless Children and Youth. Mediation shall be provided as follows:

1. A request for mediation shall be made to the Homeless Children and Youth Program within the Office of Specialized Populations either verbally or in written form. The mediation request shall cite the issues in dispute and the relief sought.

2. A mediation conference with all parties present, including representation from the county superintendent's office, shall be conducted within five school days after the request is made at which time:

- i. Issues shall be determined; and
- ii. Options explored.

3. The role of the mediator is not judgmental;

4. The mediation conference shall be:

- i. Informal; and
- ii. Held at a time and place reasonably convenient to the parties in the dispute.

5. If the mediation results in agreement, conclusions shall be incorporated into a written agreement, signed by each party, and forwarded to the county superintendent for appropriate action. If the mediation does not result in agreement, the Office of Education for Homeless Children and Youth shall assist the parent(s) or guardian(s) in filing an appeal to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3.

(c) Any dispute or appeal from any party at any stage of the process shall not delay the homeless child's immediate entrance into school. The homeless child shall be placed in the district designated by the county superintendent pending resolution of the dispute or appeal.

(d) Any disputes and appeals involving an educationally handicapped homeless child shall be pursuant to N.J.A.C. 6A:14.

Amended by R.1999 d.296, effective September 7, 1999.
See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

In (a) and (d), changed N.J.A.C. references; and in (b), substituted references to the Homeless Children and Youth Program within the Office of Specialized Populations for references to the Office of Homeless Children and Youth throughout.

Amended by R.2000 d.137, effective April 3, 2000.
See: 31 N.J.R. 4173(a), 32 N.J.R. 1177(a).
In (b)5, changed N.J.A.C. reference.

6:5-1.8 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. 6:20-3.1.

(b) The district of residence shall also include the child on its annual Application for State School Aid (ASSA) for as long as the parent(s) or guardian(s) remains homeless and the child is enrolled in another school district.

(c) When the State assumes fiscal responsibility for the tuition of a homeless child, the State shall pay the district in which the child is enrolled the State foundation amount plus the appropriate special education aid, if any.

6:5-1.9 (Reserved)

Repealed by R.2001 d.17, effective January 2, 2001.
See: 32 N.J.R. 3695(a), 33 N.J.R. 31(a).
Section was "Transportation".

6:5-1.10 Evaluation procedures for compliance

(a) The Department of Education shall monitor school districts responsible for implementing the requirements set forth in this chapter, including:

- 1. Placement decisions made according to rules and within specified timelines; and
- 2. Provision of appropriate educational services and transportation.

Amended by R.1999 d.296, effective September 7, 1999.
See: 31 N.J.R. 1409(a), 31 N.J.R. 2640(a).

In (a), substituted a reference to this chapter for a reference to this subchapter in the introductory paragraph.