

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

Chapter 17, Education for Homeless Children and Students in State Facilities, expires on April 11, 2012.

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.

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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. 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: