

CHAPTER 17

EDUCATION FOR HOMELESS CHILDREN AND STUDENTS IN STATE FACILITIES

Authority

N.J.S.A. 18A:7B-1 et seq., 18A:7F-43 et seq., and 18A:38-1.d and 19.

Source and Effective Date

R.2014 d.153, effective September 10, 2014.
See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Chapter Expiration Date

Chapter 17, Education for Homeless Children and Students in State Facilities, expires on September 10, 2021.

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 was renamed Education for Homeless Children and Students in State Facilities, effective May 7, 2007. See: 38 N.J.R. 5217(a), 39 N.J.R. 1698(a).

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 17, Education for Homeless Children and Students in State Facilities, was readopted as R.2014 d.153, effective September 10, 2014. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

6A:17-1.1 Purpose

This chapter is adopted to ensure homeless children and students placed in State facilities are provided a thorough and efficient education. This chapter establishes uniform State-wide policies and procedures to ensure the enrollment of homeless children and to respond to appeals made by parents or other parties related to the enrollment of homeless children. The chapter also identifies general program requirements related to the operation, administration, and approval of educational programs in State facilities.

Amended by R.2014 d.153, effective October 6, 2014.
See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).
Rewrote the section.

6A:17-1.2 Definitions

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

“Career and technical education” or “CTE” means as defined in N.J.A.C. 6A:19-1.2.

“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:17-2.2.

“Immediate” or “immediately” means at the instant the need for placement is made known.

“Parent” means the natural or adoptive parent, legal guardian, foster parent, surrogate parent, or 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 activities needed to ensure the enrollment and attendance of homeless children.

“School district of residence” for a homeless child means the school district in which the parent or guardian of a homeless child resided prior to becoming homeless. It may not be the school district in which the student currently resides. This is synonymous with the term “school district of origin” referenced in the McKinney-Vento Homeless Education Assistance Act. “School district of residence” for a student in a State facility 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.b.

“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.

“State facility” means residential and day programs operated by, contracted with, or specified by 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.

“Transitional living facility” means a temporary facility that provides housing to a child due to domestic violence, pursuant to P.L. 2012, c. 80 (N.J.S.A. 18A:7B-12.1).

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

New Rule, R.2014 d.153, effective October 6, 2014.
See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

SUBCHAPTER 2. EDUCATION OF HOMELESS CHILDREN

6A:17-2.1 Scope

This subchapter shall apply to district boards of education providing general education services to students in preschool through grade 12 and special education services to students ages three through 21. Nothing in this subchapter 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.

Amended by R.2014 d.153, effective October 6, 2014.
See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Substituted “This subchapter shall” for “These rules” and the second occurrence of “subchapter” for “chapter”, deleted “grades” preceding “preschool”, inserted “grade”, and inserted a period following “seq”.

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 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. Parks;
 - iv. Abandoned buildings;
 - v. Bus or train stations; or
 - vi. Temporary shelters provided to migrant workers and their children on farm sites;
3. The residence of relatives or friends where the homeless child resides out of necessity because his or her family lacks a regular or permanent residence of its own;
4. Substandard housing; or
5. Any temporary location wherein children and youth are awaiting foster care placement.

The following annotations apply to N.J.A.C. 6A:17-2.2 prior to its repeal by R.2014 d.153:

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”.

The following annotations apply to N.J.A.C. 6A:17-2.2 subsequent to its recodification from N.J.A.C. 6A:17-2.3:

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.

Recodified from N.J.A.C. 6A:17-2.3 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-2.2, Definitions, repealed.

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 (now N.J.A.C. 6A:17-2.2(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 (now N.J.A.C. 6A:17-2.2(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 (now N.J.A.C. 6A:17-2.2(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 (now N.J.A.C. 6A:17-2.2(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) (now N.J.A.C. 6A:17-2.2(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:17-2.3 Responsibilities of the school district of residence

(a) The school district of residence 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:17-2.5;

2. Pay the cost of tuition pursuant to N.J.S.A. 18A:38-19, 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 residence shall be made by the chief school administrator of the school district of residence or designee pursuant to N.J.A.C. 6A:17-2.4 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 in accordance with N.J.S.A. 18A:7B-12 as the school district of residence for a homeless child shall be the school district of residence until the parent establishes a permanent residence. Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1.d.

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".
Recodified from N.J.A.C. 6A:17-2.4 and amended by R.2014 d.153, effective October 6, 2014.
See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Section was "Responsibilities of the school district of origin". In the introductory paragraph of (a), substituted "residence" for "origin"; in (a)1, updated the N.J.A.C. reference; in (a)2, substituted "N.J.S.A. 18A:38-19," for "N.J.A.C. 6A:23-3.1"; and rewrote (b) and (c). Former N.J.A.C. 6A:17-2.3, Determination of homeless status, recodified to N.J.A.C. 6A:17-2.2.

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 (now N.J.A.C. 6A:17-2.3). 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:17-2.4 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 homeless children. The school district liaison shall:

1. Facilitate communication and cooperation between the school district of residence and the school district where the homeless child resides;

2. Develop procedures to ensure a homeless child residing in the school district is enrolled and attending school pursuant to N.J.A.C. 6A:17-2.5;

3. Ensure homeless families, children, and youth receive educational services for which they are eligible, including Head Start and Even Start programs, preschool programs administered by the local education agency, and referrals to health care, dental, mental health, 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 enrollment disputes are resolved pursuant to N.J.A.C. 6A:17-2.7;

7. Ensure 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 residence, and is assisted in accessing transportation to the school selected under N.J.A.C. 6A:17-2.5;

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 services pursuant to this section.

(b) When a homeless child resides in a school district, the school district liaison shall notify the liaison of the school district of residence within 24 hours of 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.

(c) Upon notification of the need for enrollment of a homeless child, the liaison in the school district of residence shall coordinate enrollment procedures immediately based upon the best interest of the child pursuant to N.J.A.C. 6A:17-2.5(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".

Recodified from N.J.A.C. 6A:17-2.5 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-2.4, Responsibilities of the school district of origin, recodified to N.J.A.C. 6A:17-2.3.

6A:17-2.5 School district enrollment

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

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

2. Continue the homeless child's education in the school district of last attendance if it is not the school district of residence; or

3. Enroll the homeless child in the school district where the child resides.

(b) The chief school administrator of the school district of residence 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. The enrollment of the homeless child in the school district of residence to the extent feasible, 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 career and technical education programs; and

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

(c) The chief school administrator of the school district of residence or designee shall determine the child's school district enrollment immediately after consultation with the parent. The school district of residence shall adhere to the following procedures:

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, the homeless child shall be immediately enrolled in the school district in which enrollment is sought by the

parent or guardian, pending resolution of the dispute pursuant to N.J.A.C. 6A:17-2.7.

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 district other than the school district of residence or the school district 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 residence, the chief school administrator or designee of the school district of residence shall forward to the new school district all relevant school and health records, consistent with the provisions of N.J.A.C. 6A:32, School District Operations.

(e) When a homeless child with a disability is enrolled in a school district other than the school district of residence, the school district of enrollment shall treat the student as a transfer student pursuant to N.J.A.C. 6A:14, Special Education.

(f) When the school district of residence for a homeless child cannot be determined, the chief school administrator or designee of the school district in which the child currently resides shall enroll the child immediately in the school district of the current residence or the school district of last attendance.

(g) The school district selected pursuant to this subchapter shall immediately enroll the homeless child or youth, even if he or she 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 residence, the school district of last attendance if not the school district of residence, or the school district where the child resides 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.

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".

Recodified from N.J.A.C. 6A:17-2.6 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-2.5, Designation of school district liaisons and their responsibilities, recodified to N.J.A.C. 6A:17-2.4.

6A:17-2.6 Parental rights

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

Recodified from N.J.A.C. 6A:17-2.7 by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Former N.J.A.C. 6A:17-2.6, School district enrollment, recodified to N.J.A.C. 6A:17-2.5.

6A:17-2.7 Disputes and appeals

(a) When a dispute occurs regarding the determination of homelessness or the determination of the school district of enrollment made by the school district of residence, the chief school administrator(s) or designee(s) of the involved school district(s) or the child's parent(s) shall immediately notify the executive county superintendent, who, in consultation with the Department's McKinney-Vento Homeless Education Coordinator or his or her designee, immediately shall decide the child's status. If a dispute remains between the parent and the involved school district(s) following the executive county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner for determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

(b) When a school district designated as the school district of residence disputes its designation as the school district of residence, or where no designation can be agreed upon by the involved school districts, the chief school administrator(s) or designee(s) of the involved school districts shall immediately notify the executive county superintendent, who shall make a determination immediately, if possible, but no later than within 48 hours.

1. If the dispute regarding determination of district of residence does not involve the determination of homelessness and/or district of enrollment, the school district disputing the executive county superintendent's determination may appeal to the Department pursuant to N.J.A.C. 6A:23A-19.2(d), (e), and (f), and request a determination from the Division of Administration and Finance.

2. If an appeal of a determination of district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

(c) Any dispute or appeal shall not delay the homeless child's immediate enrollment or continued enrollment in the school district. The homeless child shall be enrolled in the school district in which enrollment or continued enrollment is sought by the parent or guardian, pending resolution of the dispute or appeal.

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

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".

Recodified from N.J.A.C. 6A:17-2.8 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-2.7, Parental rights, recodified to N.J.A.C. 6A:17-2.6.

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:17-2.8 Tuition

(a) When the homeless child is enrolled in a school district other than the school district of residence, the school district of residence shall pay to the school district of enrollment the tuition costs pursuant to N.J.S.A. 18A:38-19 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence shall no longer pay tuition to the school district of enrollment.

(b) The school 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 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence shall no longer list the student on its ASSA.

(c) The State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12.1 and shall pay the tuition to the school district in which the child is currently enrolled until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d, under the following circumstances:

1. If the school district of residence cannot be determined for the homeless child;

2. If the school district of residence is outside of the State; or

3. If a child resides in a Department of Community Affairs-licensed emergency shelter or transitional living facility due to domestic violence for more than a year combined for the duration of the placement pursuant to P.L. 2012, c. 80 (N.J.S.A. 18A:7B-12.d).

i. 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 weighted base per pupil amount calculated pursuant to N.J.S.A. 18A:7F-49 and the appropriate security and special education categorical aids per pupil pursuant to N.J.S.A. 18A:7F-55 and 56.

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.

Recodified from N.J.A.C. 6A:17-2.9 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-2.8, Disputes and appeals, recodified to N.J.A.C. 6A:17-2.7.

6A:17-2.9 (Reserved)

Recodified to N.J.A.C. 6A:17-2.8 by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Section was "Tuition".

SUBCHAPTER 3. EDUCATIONAL PROGRAMS FOR STUDENTS IN STATE FACILITIES

6A:17-3.1 Scope

This subchapter 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 et seq. Educational programs and services shall be provided to students in State facilities ages five through 20 and for students with disabilities ages three through 21 who do not hold a high school diploma.

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".

Amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section.

6A:17-3.2 Educational program objectives and requirements

(a) Each State agency shall develop educational programs to complement the agency's primary mission and provide educational opportunities that meet the identified needs of students in each State facility. The programs shall be delivered, in accordance with N.J.A.C. 6A:8-5.1, through traditional strategies or a variety of individualized learning opportunities, which allow high school credit to be granted through alternative learning experiences, in accordance with program completion authorized in N.J.A.C. 6A:8-5.1(a)2.

1. Upon a student's placement in the State facility, the State agency shall:

i. Provide a program comparable to the special education student's current individualized education program (IEP), pursuant to N.J.A.C. 6A:14-4.1(g), and implement the current IEP or develop a new IEP pursuant to N.J.A.C. 6A:14-4.1(g)1 through 3. When a special education student is placed by a school district on a tuition basis, the school district of residence shall be responsible for the development of the student's IEP;

ii. Develop an individualized program plan (IPP), within 30 calendar days, for each general education student, in consultation with the student's parent, school district of residence, and a team of professionals with knowledge of the student's educational, behavioral, emotional, social, and health needs to identify appropriate instructional and support services. The IPP shall minimally include the following information for the student:

- (1) NJSMART number and personally identifiable information;
- (2) Current academic standing on the date of development;
- (3) Results of educational screening administered by the State agency;
- (4) Specific curriculum areas and course titles designed to meet all of the Core Curriculum Content Standards;
- (5) Graduation requirements of the school district of residence, for students in grades nine through 12; and
- (6) Services to facilitate the transition of a student returning to the general education program;

iii. Discuss the IPP with the student and make a reasonable effort to obtain parental consent for an initial IPP, including written notice.

(1) The State facility shall provide written notice to the parent, with a copy of the IPP, that requests the parents' consent but clearly indicates the IPP will be

implemented if consent is not received within 15 days of receipt of the notice.

(2) Parental consent need not be obtained for an initial IPP if the parent cannot be found or does not respond after reasonable efforts, or parental rights have been terminated or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed.

(3) The State facility shall document it is unable to secure the participation of the parent by maintaining a record of its attempts to arrange for the parental consent of the IPP, including, but not limited to:

(A) Detailed records of telephone calls made or attempted and the results of the calls; and

(B) Copies of correspondence sent to the parents and any response(s) received; and

iv. Review and revise the IPP at any time during the student's enrollment, as needed, or on an annual basis if the student remains enrolled in the State facility educational program, in consultation with the school district of residence.

(1) The parent shall be advised in writing of any revision(s) to the IPP.

(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 that meet the specialized needs of all students in each State facility under the 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;

2. Provide relevant job training and enhance occupational competencies through career and technical education programs where appropriate, pursuant to N.J.A.C. 6A:19, Career and Technical Education Programs and Standards, and N.J.A.C. 6A:8, Standards and Assessments;

3. As appropriate, provide adult education programs and post-secondary and college programs offered by institutions licensed by the Department of Education or the Office of the Secretary of Higher Education in programs operated by the State Departments of Corrections, Children and Families, and Human Services, pursuant to N.J.S.A. 18A:7B-4, 8, and 9; and

4. As appropriate, provide an educational program preparing students for the adult education assessment, pursuant to N.J.A.C. 6A:20-1.2, for programs operated by

the Juvenile Justice Commission and the Departments of Corrections and Children and Families.

(c) Attendance in educational programs is compulsory for all students, except for a student age 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. A waiver may be revoked at any time by the former student.

(d) All education programs, with the exception of instruction provided pursuant to (f) below, shall be available at least four hours per day, five days a week, for a minimum of 220 days each year.

(e) The actual number of days a student with a disability must attend the educational program shall be determined by the student's IEP in accordance with N.J.A.C. 6A:14-3.7.

(f) Each State agency shall ensure that instruction is provided to students further confined due to a health condition, treatment, or behavioral segregation:

1. The teacher shall provide instruction for the number of days and length of time sufficient to continue the student's academic progress and dependent upon the student's ability to participate due to a temporary or chronic health condition or a need for treatment that precludes participation in the usual education setting or as determined by custody for behavioral segregation.

2. For a student with disabilities, the academic instruction shall be consistent with the student's IEP, pursuant to N.J.A.C. 6A:14-2.8, and shall meet the Core Curriculum Content Standards. When the provision of academic instruction will exceed 30 consecutive school days, the IEP team shall convene a meeting to review and, if appropriate, revise the student's IEP.

3. For a general education student, the instruction shall be consistent with the student's individualized program plan and shall meet the Core Curriculum Content Standards and the requirements of the district board of education for promotion at that grade level.

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

(h) Each State agency shall ensure 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 all students in that agency's State facilities shall comply with the State agency's established code of conduct.

(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 5.2 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 shall certify the student has successfully completed all graduation requirements contained in N.J.A.C. 6A:8-5.1 so the Commissioner of Education may issue a State-endorsed diploma.

The following annotation applies to N.J.A.C. 6A:17-3.2 prior to its repeal by R.2014 d.153:

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".

The following annotations apply to N.J.A.C. 6A:17-3.2 subsequent to its recodification from N.J.A.C. 6A:17-3.3:

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".

Recodified from N.J.A.C. 6A:17-3.3 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-3.2, Definitions, repealed.

6A:17-3.3 Students with a disability

Each State agency shall ensure all students with a disability in the agency's State facilities are provided a free and appropriate public education as set forth under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., and shall 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.

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".

Recodified from N.J.A.C. 6A:17-3.4 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Section was "Students with disabilities". Rewrote the section. Former N.J.A.C. 6A:17-3.3, Educational program objectives and requirements, recodified to N.J.A.C. 6A:17-3.2.

6A:17-3.4 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.

1. To maintain program operations during temporary educational personnel absences and to enable students to fulfill credit and graduation requirements, the State agency shall ensure appropriately certified substitute teachers for academic and career and technical education programs are available.

2. Substitute teachers in State facilities shall adhere to the requirements pursuant to N.J.A.C. 6A:9B-6.5.

(b) The Office of Education in each State agency shall ensure 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 make available 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:17-3.7(c).

2. The Department of Education shall grant exceptions on a case-by-case basis when the requested exception does the following:

- i. Justifies the need for an alternate program structure;
- ii. Demonstrates the specialized needs of the students served will continue to be met; and
- iii. Ensures the necessary supervision, security, and safety of the students served.

(f) The class size of special education programs serving solely students with disabilities shall be in accordance with N.J.A.C. 6A:14-4.7.

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).

Recodified from N.J.A.C. 6A:17-3.5 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-3.4, Students with disabilities, recodified to N.J.A.C. 6A:17-3.3.

6A:17-3.5 Facilities

(a) Each State agency shall ensure 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 all educational programs are provided in locations separate from sleeping areas, except where appropriate for safety 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".

Recodified from N.J.A.C. 6A:17-3.6 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

In (a) and (b), deleted "that" following "ensure"; and in (b), substituted "safety" for "instructional". Former N.J.A.C. 6A:17-3.5, Staffing and class size, recodified to N.J.A.C. 6A:17-3.4.

6A:17-3.6 Student records and reports

(a) Within 10 school days of receipt of a request for a copy of the student's educational records by a State facility, the school district receiving the request shall provide the State facility with the student's educational records and other relevant school district information to assist the transition, including, but not limited to, the following:

1. State identification number in NJSMART;
2. The most recent report card;
3. Transcripts and the school district's graduation requirements for students in grades nine through 12;
4. Attendance standards;
5. The name of a contact person;
6. For students with disabilities, the name of a special education contact person;
7. Statewide assessment results;
8. Other assessment results, if available;
9. Health records, including immunizations pursuant to N.J.A.C. 6A:16-2.4(d);
10. Photocopy of the permanent record card pursuant to N.J.A.C. 6A:32-7.5(e)5; and
11. The most current eligibility conference report, IEP, and child study team assessments for special education students.

(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 the school district of residence is 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) To ensure full and appropriate credit for a program of study completed by a student, each State agency shall transfer educational records and a final progress report for each student exiting a State facility to the school district identified upon discharge, or if none is identified, the school district of residence, as appropriate, within 10 school days of the student's exit. The report shall include a designated contact person and the following information, which is necessary to formulate an appropriate educational program and to ensure credit for work completed is granted:

1. Statewide assessment and diagnostic findings;
2. Credit earned toward high school graduation requirements pursuant to N.J.A.C. 6A:8-5.1;
3. Grade level equivalent;
4. Vocational training experience, including any credential, certification, or license earned, and recognized career and technical education end-of-program technical skills assessment or industry certification tests results; and
5. Individualized program plan or individualized education program for students with a disability.

(e) The student's school district of residence shall grant academic credit based on the appropriate documentation provided by the State agency for the program of study successfully completed in a State facility, pursuant to N.J.S.A. 18A:7B-8 and 9 and N.J.A.C. 6A:8-5.1(a)1 through 6.

(f) The student's school district of residence may contact the director of the appropriate State agency Office of Education to dispute any academic credit recommendation.

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".
Recodified from N.J.A.C. 6A:17-3.7 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-3.6, Facilities, recodified to N.J.A.C. 6A:17-3.5.

6A:17-3.7 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, and N.J.S.A. 18A:7F-43 et seq., or other applicable law.

(b) Each State agency shall submit annually to the Department of Education, the resident enrollment of students in the agency's State facility education programs on the last school day prior to October 16 of the prebudget year, pursuant to N.J.S.A. 18A:7B-2.

(c) By December 15 of each prebudget year, pursuant to N.J.S.A. 18A:7F-24, each State agency shall submit to the Department of Education, an application that includes a detailed education program plan and budget for approval of all programs and services under its jurisdiction. The plan shall include, at a minimum, a program description; staffing patterns; facility-level budget information; signed statement of assurance; program narrative; and contracted services.

(d) Prior to March 1 of the prebudget year, the Commissioner of Education 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. The payments may be withheld pursuant to N.J.S.A. 18A:7B-5 and 18A:7F-43 et seq.

(f) Each State agency shall use the entitlement to support its 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 to the Commissioner of Education requests for revisions to the approved education program plan and budget. The following revisions shall require written approval from the Department of Education before implementation:

1. Budget category expenditure variances that exceed \$10,000 or 10 percent of the approved amount in any budget line;
2. Any addition or deletion to approved contracts for services;
3. Any addition, deletion, or substitution of approved amounts for the purchase of instructional or non-instructional equipment; and
4. Any substantive addition or deletion in educational programs.

(h) Each revision under (g) above shall be fully documented and contain a certification from the Office of Education in the State agency and its commissioner or executive director, 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 non-salary expenditures shall be supported by a vendor's invoice, a verification of receipt, and evidence 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 shall 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.

Recodified from N.J.A.C. 6A:17-3.8 and amended by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Rewrote the section. Former N.J.A.C. 6A:17-3.7, Student records and reports, recodified to N.J.A.C. 6A:17-3.6.

6A:17-3.8 (Reserved)

Recodified to N.J.A.C. 6A:17-3.7 by R.2014 d.153, effective October 6, 2014.

See: 46 N.J.R. 729(a), 46 N.J.R. 2033(b).

Section was "Approval process for funding."