

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.

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 in-

formed 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".

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