

and limits of authority, and work relationships within and outside the school and school district.

“Mandated student records” means those student records that school districts have been directed to compile by State statute, regulation or authorized administrative directive.

“Medical evaluation” means the examination of an individual’s body by the school medical inspector or by any physician licensed to practice medicine.

*New Jersey State Library*

“Objective” means a written statement of the intended outcome of a specific educational process.

“Observation” means a visit to an assigned work station by a certified supervisor for the purpose of formally collecting data on the performance of a teaching staff member’s assigned duties and responsibilities and of a duration appropriate to same.

“Observation conference” means a discussion between a supervisor and teaching staff member to review a written report of the performance data collected in a formal observation and its implications for the teaching staff member’s annual evaluation.

“Paraprofessional” means a school aide or classroom aide who assists appropriately certified personnel with the supervision of student activities.

“Parent” means the natural or adoptive parent, the legal guardian, surrogate parent who has been appointed according to N.J.A.C. 6A:14-2.2(a) through (d), or a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student’s welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under this chapter. For the purposes of this chapter, the term “parent” shall include the adult student as defined above. In addition, a foster parent may act as a parent under this chapter if the parent’s authority to make education decisions on the student’s behalf has been terminated by a court of appropriate jurisdiction.

“Performance report” means a written appraisal of the teaching staff member’s performance prepared by an appropriately certified supervisor.

“Permitted student records” means records that a district board of education has authorized, by resolution adopted at a regular public meeting, to be collected in order to promote the educational welfare of the student.

“Physical examination” means the assessment of an individual’s health, in accordance with the requirements of N.J.A.C. 6A:16-2.2.

“Psychiatric examination” means an examination of an individual for the purpose of diagnosis and treatment of mental disorder.

“Regularly-certified, inexperienced first-year principals” means individuals who acquired regular New Jersey school principal endorsements pursuant to N.J.A.C. 6A:9-12.5, prior to September 1, 1989; have not previously held full-time employment as principals, assistant principals, vice principals, or in other positions for which the principal endorsement is required in New Jersey or elsewhere; and have been offered employment as principals, assistant principals or vice principals in a New Jersey public school district.

“Remedial course” means any course or subject that is a review of a course or subject previously taken for which credits or placement may be awarded upon successful completion of the course.

“School contact directory for official use” means a compilation by a district board of education that includes the following information for each student: name, address, telephone number, date of birth and school of enrollment, and which is provided for official use only to judicial, law enforcement and medical personnel.

“School-level plan” means a two-year plan that is developed by each school, is based on school report card data and includes student performance objectives, progress review by teaching and administrative staff and parent involvement.

“School report card” means a profile of each school that is compiled annually by the Department of Education and contains statistical information provided by the school district.

“Secondary” means grades nine through 12 in all high schools, grades seven and eight in junior high schools, grades seven, eight and nine in middle schools and grades seven and eight in elementary schools having departmental instruction.

“Statement of assurance” means a document submitted by the chief school administrator to the county superintendent that verifies the development and implementation of the school-level plan.

“Student” means a person who is or was enrolled in a public school.

“Student discipline record” means information maintained in a student’s record of all disciplinary actions taken against the student by the school district and any information the school district has obtained pursuant to N.J.S.A. 2A:41-60, Disclosure of juvenile information.

“Student information directory” means a publication of a district board of education that includes the following information relating to a student:

1. Name;
2. Grade level;
3. Date and place of birth;
4. Dates of school attendance;
5. Major field of study;
6. Participation in officially recognized activities;
7. Weight and height relating to athletic team membership;
8. Degrees;
9. Awards;

10. The most recent educational agency attended by the student; and

11. Other similar information.

“Student record” means information related to an individual student gathered within or outside the school district and maintained within the school district, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information that is maintained for the purpose of second party review is considered a student record. Therefore, information recorded by any certified school personnel solely as a memory aid, not for the use of a second party, is excluded from this definition.

“Supervisor” means any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members.

“Teaching staff member” means a member of the professional staff of a school district holding office, position or employment of such character that the qualifications for such office, position or employment require him or her to hold a valid and effective standard, provisional or emergency certificate, appropriate to his or her office, position or employment, issued by the State Board of Examiners. Teaching staff members include the positions of school nurse and school athletic trainer.

#### Case Notes

Letter from principal to parents reporting that their first-grade son had held his hand to another child’s head like a pistol and threatened to shoot him conformed to the broad definitions of “student discipline record” and “student record” as defined by N.J.A.C. 6A:32-2.1. S.S. & E.S. ex rel. E.S. v. Bd. of Educ. of Union, OAL Dkt. No. EDU 5179-07, 2007 N.J. AGEN LEXIS 1006, Commissioner’s Decision (August 23, 2007).

### SUBCHAPTER 3. DISTRICT BOARDS OF EDUCATION—GENERAL

#### 6A:32-3.1 Special meetings of district boards of education

(a) The secretary of the district board of education shall call a special meeting of the district board of education whenever:

1. Requested by the president of the district board of education to do so; or
2. When presented with a petition signed by a majority of the full membership of the district board of education requesting the special meeting.

(b) Public notice of such special meeting shall be made pursuant to law and regulation. In accordance with N.J.S.A. 18A:10-6, the public notice shall include the date, time, location, and purpose(s) of the special meeting.

#### 6A:32-3.2 Requirements for the code of ethics for district board of education members and charter school board of trustees members

(a) Each district board of education and charter school board of trustees shall:

1. Discuss the School Ethics Act and the Code of Ethics for School Board Members, pursuant to N.J.S.A. 18A:12-21 et seq., at a regularly scheduled public meeting annually;
2. Adopt policies and procedures regarding the training of district board of education and charter school board of trustees members in understanding the Code of Ethics; and
3. Provide documentation pursuant to (b) below that each member of the district board of education or board of trustees has received and reviewed the Code of Ethics.

(b) Each member of the district board of education or charter school board of trustees shall sign an acknowledgment of receipt of the Code of Ethics for School Board Members contained within N.J.S.A. 18A:12-21 et seq. This acknowledgement of receipt requires each district board of education member and charter schools board of trustees member to read and become familiar with the Code of Ethics.

#### 6A:32-3.3 Boards of school estimate

(a) In any district board of education operating under N.J.S.A. 18A:9-2, the mayor of the municipality comprising the school district shall be the presiding officer of the board of school estimate.

(b) In the event of the absence of the mayor at any meeting of the board of school estimate, the members present at such meeting shall proceed to elect a presiding officer pro tem.

### SUBCHAPTER 4. EMPLOYMENT AND SUPERVISION OF TEACHING STAFF

#### 6A:32-4.1 Employment of teaching staff

(a) This section applies to district boards of education or private agencies which provide educational services by means of public funds.

(b) Each district board of education shall determine the types of background experiences and personal qualities, if any, that the school district requires or prefers successful candidates for specific positions to possess in addition to appropriate State certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality of individual achievement desired, rather than only the amount of experience.

(c) No teaching staff member shall be employed by any district board of education unless he or she is the holder of a

3. Data contained in information regarding specific experiential, educational or medical qualifications required for receipt of a public pension, except for detailed medical or psychological information.

(b) Seniority, pursuant to N.J.S.A. 18A:29-9 et seq., shall be determined according to the number of academic or calendar years of employment, or fraction thereof, as the case may be, in the school district in specific categories as hereinafter provided. The periods of unpaid absences not exceeding 30 calendar days aggregate in one academic or calendar year, leaves of absence at full or partial pay and unpaid absences

SUBCHAPTER 5. SENIORITY

**6A:32-5.1 Standards for determining seniority**

(a) The word "employment" for purposes of these standards shall also be held to include "office" and "position."

granted for study or research shall be credited toward seniority. All other unpaid absences or leaves of absence shall not receive seniority credit.

(c) In computing length of service for seniority purposes, full recognition shall be given to previous years of service within the school district and the time of service in or with the military or naval forces of the United States or this State, pursuant to the provisions of N.J.S.A. 18A:28-12.

(d) Employment in the school district prior to the adoption of these standards shall be counted in determining seniority.

(e) The holder of an emergency certificate shall not be entitled to seniority rights but, when he or she becomes the holder of a standard certificate, the years of employment under the emergency certificate shall count toward seniority under the standard certificate. Upon acquisition of a standard certificate, any periods of service under a provisional certificate shall also be counted toward seniority.

(f) Whenever a person shall hold employment simultaneously under two or more subject area endorsements or in two or more categories, seniority shall be counted in all subject area endorsements and categories in which he or she is or has been employed. For purposes of calculating seniority entitlement, there shall be no distinction between academic years and calendar years.

(g) Where the title of any employment is not properly descriptive of the duties performed, the holder thereof shall be placed in a category in accordance with the duties performed and not by title. Whenever the title of any employment shall not be found in the certification rules or in these rules, the holder of the employment shall be classified as nearly as may be according to the duties performed, pursuant to the provisions of N.J.A.C. 6A:9, Professional Licensure and Standards.

(h) Whenever a person shall move from or revert to a category, all periods of employment shall be credited toward his or her seniority in any or all categories in which he or she previously held employment.

(i) Whenever any person's particular employment shall be abolished in a category, he or she shall be given that employment in the same category to which he or she is entitled by seniority. If he or she shall have insufficient seniority for employment in the same category, he or she shall revert to the category in which he or she held employment prior to his or her employment in the same category and shall be placed and remain upon the preferred eligible list of the category from which he or she reverted until a vacancy shall occur in such category to which his or her seniority entitles him or her.

(j) If he or she shall have insufficient seniority in the category to which he or she shall revert, he or she shall, in like manner, revert to the next category in which he or she held employment immediately prior to his or her employment in the category to which he or she shall have reverted, and

shall be placed and remain upon the preferred eligible list of the next preceding category, and so forth, until he or she shall have been employed or placed upon all the preferred eligible lists of the categories in which he or she formerly held employment in the school district.

(k) In the event of his or her employment in some category to which he or she shall revert, he or she shall remain upon all the preferred eligible lists of the categories from which he or she shall have reverted, and shall be entitled to employment in any one or more such categories whenever a vacancy occurs to which his or her seniority entitles him or her.

(l) The following shall be deemed to be specific categories, not necessarily numbered in order of precedence:

1. Superintendent of schools;
2. Assistant superintendent;
  - i. Each assistant superintendency shall be a separate category; and
  - ii. District boards of education shall adopt a job description for each assistant superintendent position which shall set forth qualifications and endorsements for such position;
3. Director;
  - i. Each director position shall be a separate category; and
  - ii. District boards of education shall adopt job descriptions for each director position which sets forth the qualifications and endorsements for such position;
4. High school principal;
5. Adult high school principal;
6. Alternative school principal;
7. Vocational school principal;
8. Junior high school principal;
9. Elementary principal;
10. Supervisor;
  - i. Each supervisory title shall be a separate category; and
  - ii. District boards of education shall adopt a job description for each supervisory position which sets forth the qualifications and specific endorsements required for such position;
11. High school vice principal or assistant principal;
12. Adult high school vice principal or assistant principal;
13. Alternative school vice principal or assistant principal;

14. Junior high school vice principal or assistant principal;

15. Elementary school vice principal or assistant principal;

16. Vocational school vice principal or assistant principal;

17. Secondary:

i. Any person holding an instructional certificate with subject area endorsements shall have seniority within the secondary category only in such subject area endorsement(s) under which he or she has actually served;

ii. Whenever a person shall be reassigned from one subject area endorsement to another, all periods of employment in his or her new assignment shall be credited toward his or her seniority in all subject area endorsements in which he or she previously held employment;

iii. Any person employed at the secondary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the secondary category and only for the period of actual service under such educational services certificate or special subject field endorsement; and

iv. Persons employed and providing services on a district-wide basis under a special subject field endorsement or an educational services certificate shall acquire seniority on a district-wide basis;

18. Elementary:

i. District boards of education that make a determination to reorganize instruction at grades seven and eight pursuant to these rules shall do so by adoption of a formal resolution setting forth the reasons for such reorganization;

ii. Any person employed at the elementary level in a position requiring an educational services certificate or a special subject field endorsement shall acquire seniority only in the elementary category and only for the period of actual service under such educational services certificate or special subject field endorsement;

iii. Persons employed and providing services on a district-wide basis under a special field endorsement or an educational services certificate shall acquire seniority on a district-wide basis;

iv. Persons serving under elementary endorsements in departmentally organized grades seven and eight prior to September 1, 1983 shall continue to accrue seniority in the elementary category for all such service prior to and subsequent to September 1, 1983. In addition, such persons shall accrue seniority in the secondary category but limited to the school district's departmentally organ-

ized grades seven and eight and the specific subject area actually taught in such departmentally organized grades, subsequent to September 1, 1983; and

19. Additional categories of specific educational service endorsements issued by the State Board of Examiners and listed in the State Board rules dealing with teacher certification pursuant to N.J.A.C. 6A:9, Professional Licensure and Standards.

(m) In the event of a restructure of grade levels which results in the elimination of all junior high schools in the school district and the creation of schools with a grade level organization which includes grades seven and eight, the seniority rights of the junior high principals, vice principals and assistant principals displaced by such restructuring shall be transferable to the newly reorganized schools in the category as defined by (l)9 above.

#### Case Notes

Adopting Initial Decision's conclusion that a tenured school social worker under an educational services certification, who also possessed certification as an elementary teacher but had never served as a teacher in the school district, and whose social worker position was eliminated through a reduction in force, did not have rights over a nontenured applicant to a teaching position; neither tenure nor seniority applied across certificates, and therefore petitioner only had rights with regard to positions within the educational services certification (adopting 2008 N.J. AGEN LEXIS 70, as supplemented). *Aiello v. Bd. of Educ. of Westwood Reg'l School Dist.*, OAL Dkt. No. EDU 7986-07, 2008 N.J. AGEN LEXIS 263, Commissioner's Decision (March 20, 2008).

Where Nursing Assistant instructor, due to new regulations, lacked sufficient experience in geriatrics to meet the requirements for her position, and the district allowed her to serve as a temporary teacher in the Practical Nursing (PN) program to gain experience in geriatrics, the instructor was not eligible for tenure credit during the two months she taught PN without an appointment and under a substitute credential and could not tack those two months onto her seniority; consequently, the reduction in force termination of the instructor was not improper under N.J.S.A. 18A:28-10. *Kelly v. Bd. of Educ. of Middlesex County Vocations Technical School Dist.*, OAL Dkt. No. EDU 4588-01, Commissioner's Decision (November 9, 2006), aff'd, SB No. 45-06, 2007 N.J. AGEN LEXIS 548 (N.J. State Bd. of Educ. May 2, 2007).

Nursing assistant emergency certification held by a teacher during the time she taught Practical Nursing (PN) classes with only a substitute certificate did not allow her to tack that time onto her seniority as a PN teacher; N.J.A.C. 6A:32-5.1(e) only applies to employees who later achieve standard certification in the same field as the emergency certificate under which they were serving. *Kelly v. Bd. of Educ. of Middlesex County Vocations Technical School Dist.*, OAL Dkt. No. EDU 4588-01, Commissioner's Decision (November 9, 2006), aff'd, SB No. 45-06, 2007 N.J. AGEN LEXIS 548 (N.J. State Bd. of Educ. May 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 344) adopted, which concluded that a former athletic director failed to show that the Board violated his tenure, seniority and/or preferred eligibility rights by its appointment of a non-tenured individual to the position of Assistant Principal for Athletics and Student Activities; contrary to petitioner's contention, the position of Assistant Principal for Athletics and Student Activities was not an unrecognized position under N.J.A.C. 6A:9-5.5. A vacant assistant principal position existed when the Board created the new position, and petitioner failed to show that the duties of the position lacked the character necessary to require a principal endorsement. *McGriff v. Bd. of Educ. of Montclair*, OAL Dkt. No. EDU 10927-04, 2006 N.J. AGEN LEXIS 647, Commissioner's Decision (July 13, 2006).

maintained in the school district and shall devise procedures for assuring that access to such records is limited to authorized persons.

(b) Records for each individual student shall be maintained in a central file at the school attended by the student. When records are maintained in different locations, a notation in the central file as to where such other records may be found is required.

1. Each district board of education shall maintain student health records in a secure accessible manner:

i. Records shall be located in a locking cabinet or room;

ii. Records kept in electronic form shall be both accessible and secure;

iii. Student health records shall be maintained separately from other student records, until such time as graduation or termination whereupon the health history and immunization record shall be removed from the student's health record and placed in the student's mandated record.

iv. Records shall be located in the school building or complex to which the student is assigned; and

v. Records shall be accessible during the hours in which the school program is in operation.

(c) When records are stored in a computerized system, computer programmed security blocks are required to protect against any security violations of the records stored therein. To guard against the loss of student records, school districts shall maintain an updated hard copy and backup versions of student records.

(d) Mandated student records required as part of programs established through State administered entitlement or discretionary funds from the U.S. Department of Education shall be maintained for a period of five years after graduation or termination from the school district or age 23, whichever is longer, and shall be disposed of in accordance with N.J.S.A. 47:3-15 et seq.

(e) A district board of education that establishes an Internet website shall not disclose any personally identifiable information about a student, in accordance with N.J.S.A. 18A:36-35.

#### 6A:32-7.5 Access to student records

(a) Only authorized organizations, agencies or persons as defined in this section shall have access to student records, including student health records.

(b) Each district board of education shall control access to, disclosure of, and communication regarding information contained in student health records to assure access only to

those persons under the conditions permitted by Federal and State statute and regulations or stated in (e) below.

(c) The district board of education may charge a reasonable fee for reproduction, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-2, provided that the cost does not effectively prevent the parents or adult students from exercising their rights under this subchapter or under rules and regulations regarding students with disabilities.

(d) Access to and disclosure of a student health record shall meet the requirements of the Family Education Rights and Privacy Act, 34 C.F.R. Part 99 (FERPA).

(e) Authorized organizations, agencies and persons shall include only the following:

1. The student who has the written permission of a parent the parent of a student under the age of 18 whether or not the child resides with that parent except per N.J.S.A. 9:2-4;

i. The place of residence shall not be disclosed; and

ii. Access shall not be provided if denied by a court;

2. Students at least 16 years of age who are terminating their education in the school district because they will graduate secondary school at the end of the term or no longer plan to continue their education;

3. The adult student and the student's parent who has the written permission of such student, except that the parent shall have access without consent of the student as long as the student is financially dependent on the parent and enrolled in the public school system or if the student has been declared legally incompetent by a court of appropriate jurisdiction. The parent of the financially dependent adult student may not disclose information contained in the adult student's record to a second or third party without the consent of the adult student;

4. Certified school district personnel who have assigned educational responsibility for the student shall have access to the general student record but not to the student health record except under conditions permitted in N.J.A.C. 6:16-1.5;

5. Certified educational personnel who have assigned educational responsibility for the student and who are employed by agencies listed below shall have access to the general student record but not to the student health record except under conditions permitted in N.J.A.C. 6:16-1.5:

i. An approved private school for the disabled;

ii. A State facility;

iii. Accredited nonpublic schools in which students with educational disabilities have been placed according to N.J.S.A. 18A:46-14; or

iv. Clinics and agencies approved by the Department of Education;

6. A district board of education, in order to fulfill its legal responsibility as a board, has access through the chief school administrator or his or her designee to information contained in a student's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult student;

7. Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to those portions of the record to the extent that is necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to those student files which such staff are directed to enter or record information and shall cease when the specific assigned task is completed;

8. Accrediting organizations in order to carry out their accrediting functions;

9. The Commissioner of Education and members of the New Jersey Department of Education staff who have assigned responsibility which necessitates the review of such records;

10. Officials of other district boards of education within the State of New Jersey or other educational agencies or institutions where the student is placed, registered or seeks to enroll subject to the following conditions:

i. Original mandated student records which the schools have been directed to compile by New Jersey statute, regulation or authorized administrative directive shall be forwarded to the receiving school district with written notification to the parent or adult student;

ii. Original mandated student records which a district board of education has required shall be forwarded to the receiving school district only with the written consent of the parent or adult student except where a formal sending-receiving relationship exists between the school districts;

iii. All records to be forwarded, including disciplinary records as specified in N.J.S.A. 18A:36-19(a), shall be sent to the chief school administrator or his or her designee of the school district to which the student has transferred within 10 school days after the transfer has been verified by the requesting school district;

iv. The chief school administrator or his or her designee shall request all student records in writing from the school district of last attendance within two weeks from the date that the student enrolls in the new school district;

v. The chief school administrator or his or her designee of the school district of last attendance shall upon request, provide a parent(s) or an adult student with

a copy of the records disclosed to other educational agencies or institutions; and

vi. Proper identification, such as a certified copy of the student's birth certificate, shall be requested at the time of enrollment in a new school district;

11. Officials of the United States Department of Education who have assigned responsibilities which necessitate review of such records;

12. Officers and employees of a State agency who are responsible for protective and investigative services for students referred to that agency, pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, district boards of education shall ask such State agency for its cooperation in sharing the findings of the investigation;

13. Organizations, agencies and persons from outside the school if they have the written consent of the parent or adult student, except that these organizations, agencies and persons shall not transfer student record information to a third party without the written consent of the parent or adult student;

14. Organizations, agencies and individuals outside the school, other than those specified in this section, upon the presentation of a court order; and

15. Bona fide researchers who explain in writing, in advance to the chief school administrator, the nature of the research project and the relevance of the records sought and who satisfy the chief school administrator or his or her designee that the records are to be used under strict conditions of anonymity and confidentiality. Such assurance shall be received in writing by the chief school administrator prior to the release of information to the researcher.

(f) Nothing in this section shall be construed to prohibit school personnel from disclosing information contained in the student health record to students or adults in connection with an emergency, if such knowledge is necessary to protect the immediate health or safety of the student or other persons.

(g) In complying with this section, individuals shall adhere to requirements pursuant to N.J.S.A. 47:1A-10, the Open Public Records Act (OPRA) and 20 U.S.C. §1232g; 34 CFR Part 99, the Family Educational Rights and Privacy Act (FERPA).

#### **6A:32-7.6 Conditions for access to student records**

(a) All authorized organizations, agencies and persons defined in this subchapter shall have access to the records of a student, subject to the following conditions:

1. No student record shall be altered or disposed of during the time period between a request to review the record and the actual review of the record.