

**First Discussion
August 2, 2006**

TO: Members, State Board of Education

FROM: Lucille Davy, Acting Commissioner

SUBJECT: [Students at Risk of Not Receiving a Public Education] Homeless Education and Programs for Students in State Facilities, N.J.A.C. 6A:17

REASON
FOR ACTION: Readoption with Amendments

SUNSET DATE: February 19, 2007

PROJECTED
SUNSET DATE: February, 2012

Summary

The Department of Education (department) is proposing to readopt with amendments the rules for Students at Risk of Not Receiving a Public Education, as they are scheduled to expire in February 2007. Amendments to this chapter previously were adopted in April 2004 and in July 2005 in order to reflect changes in the Federal law under The No Child Left Behind Act.

Chapter 17, subchapter 2, Education of Homeless Students, provides the regulatory framework to ensure that homeless children are able to meet the same challenging state content and student performance standards that all other students in the state are expected to meet. Subchapter 3 concerns the education of students in state facilities, to ensure that homeless children and youth and those have access to the same free and appropriate public education as provided to other children and youth. This subsection of the Federal law was created to recognize the unique circumstances of homeless children and youth and to define for states the educational rights of homeless children and youth. In 1994, the Improving America's Schools Act (P.L. 103-382) amended the McKinney-Vento Homeless Assistance Act to ensure that these children and youth have access to appropriate educational services, including public preschool, which will provide them with the opportunities to meet the same academic achievement and student performance standards to which all children are held.

Subsequent to the passage of the McKinney-Vento Homeless Assistance Act, amendments to the State's residency requirements became law (N.J.S.A. 18A:38-1 and 18A:7B-12) in July 1990. Statewide rules at N.J.A.C. 6:3-8 were adopted in November 1990 to establish uniform Statewide policies and procedures to ensure that the educational rights of these children were met and that they have access to the same education as all other children in New Jersey. These rules were amended in 1993 in order to clarify further the unique needs of this population, and readopted and recodified to N.J.A.C. 6:5 Provisions for the Education of Homeless Children and Youth, in 1999. In January 2002, a new chapter, N.J.A.C. 6A:17, Students at Risk of Not Receiving a Public Education, was adopted by the State Board of Education.

Chapter 17 subchapter 3 deals with Educational Programs for Students in State Facilities. The State Facilities Education Act (SFEA) of 1979 (N.J.S.A. 18A:7B-1 et seq.) was enacted for the purpose of providing a thorough and efficient education to all eligible students in State facilities. The law established a funding mechanism that assessed the district board of education tuition costs of students served by the Departments of Corrections and Human Services. In 1995, the authority of the SFEA was expanded to include programs operated by or under contract with the newly created Juvenile Justice Commission. These three state agencies serve thousands of New Jersey public school students on an annual basis. They are referred through the courts and social service provider agencies as well as through public schools. These specialized settings by their very nature are required to operate on a year round basis with specific limits on class size, as each enrolls and may discharge students with disparate educational abilities at any point in the school year. Oversight of these educational programs was assigned to the Commissioner of Education.

In 1996 the adoption of N.J.S.A. 18A:7F-1 et seq., the Comprehensive Educational Improvement Financing Act (CEIFA), reaffirmed the department's responsibility for oversight of these programs. It further defined department responsibilities to include the establishment of educational standards, promulgation of rules and the review of program operations. Under CEIFA the funding formula was changed from a categorical aid-based process to an annual cost per pupil basis.

When the SFEA was originally enacted, the rules for State facilities were included under Special Education. In 1993 the department developed a separate chapter, N.J.A.C. 6:9, Educational Programs for Pupils in State Facilities, to accurately define standards for students in State facilities, many of whom were not eligible for special education. The rules were revised in 1999 to require that State facilities incorporate the Core Curriculum Content Standards into their programs, to ensure that enrolled students could work towards a State-endorsed high school diploma. In February 2002, the chapter was combined with 6:5, which addressed the education of homeless students, and recodified under the title Students At Risk of Not Receiving a Public Education.

The department is proposing to change the name of this chapter to more accurately reflect its scope and purpose from Students At Risk of Not Receiving a Public Education to Homeless Education and Programs for Students in State Facilities. The chapter addresses the concerns of two specific groups of at-risk youth and is not intended to address the full needs of all at-risk youth in New Jersey public schools.

The rules proposed for re adoption with amendments are consistent with the department's mission statement and the State Board strategic plan. The State Board of Education's "Strategic Plan for Improvement of Public Education in the State of New Jersey" identifies a principal mission of the State Board in collaboration with the Department; to provide leadership in the development of exceptional learning opportunities for New Jersey's public school students for the purpose of enabling them to obtain a superior education. The re adoption of these rules with amendments will ensure that homeless children and those placed in State facilities also have the opportunity to receive a thorough and efficient education.

When used alone, the term "district" is proposed to be amended throughout the chapter to "school district." Outdated cross-references are being updated in several sections to include appropriate N.J.A.C. citations and chapter titles.

As the department has provided a 60-day comment period in this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

The following summary provides an overview of the rules proposed for re adoption with amendments.

Subchapter 1. General Provisions

N.J.A.C. 6A:17-1.1 Purpose

This section describes the general purpose of the rules.

Subchapter 2. Education of Homeless Children

N.J.A.C. 6A:17-2.1 Scope

This section describes the population to which these rules apply and the services that they cover.

N.J.A.C. 6A:17-2.2 Definitions

This section describes the meaning of words and terms used in subchapter 2.

N.J.A.C. 6A:17-2.3 Determination of homeless status

This section describes the process by which a district board of education determines that a child or youth is homeless.

N.J.A.C. 6A:17-2.4 Responsibilities of the school district of origin

This section describes the services and fiscal responsibilities that the child or youth's school district of origin retains when the child becomes homeless.

N.J.A.C. 6A:17-2.5 Designation of school district liaisons and their responsibilities

This section outlines the responsibility of the chief school administrator to name a liaison in each school district to ensure that the needs of homeless children are being met, as well as the duties of the homeless liaison. The term “district” has been replaced with “school district.”

N.J.A.C. 6A:17-2.6 School district enrollment

This section describes the process by which the chief school administrator of the school district of origin shall determine where a homeless student is enrolled. The code citation has been updated, and prior language is being deleted for the purpose of clarity, as the protective provisions under N.J.A.C. 6A:32, formerly N.J.A.C. 6:3, apply to the transfer of all students records, not just to students whose parents are homeless due to domestic violence.

N.J.A.C. 6A:17-2.7 Parental rights

This section describes parents’ rights in relation to the education of their homeless child(ren).

N.J.A.C. 6A:17-2.8 Disputes and appeals

This section describes the duties of the chief school officers and county superintendents involved when a dispute occurs regarding the determination of homelessness or proper enrollment.

N.J.A.C. 6A:17-2.9 Tuition

This section describes the responsibilities for payment of tuition costs of the homeless child or youth.

Subchapter 3 Educational Programs for Students in State Facilities

N.J.A.C. 6A:17-3.1 Scope

This section describes the population to which these rules apply, and the services that they cover. The department is proposing to amend the code citation to reflect current rules.

N.J.A.C. 6A:17-3.2 Definitions

This section describes the meaning of words and terms used in subchapter 3.

N.J.A.C. 6A:17-3.3 Educational program objectives and requirements

This section outlines the responsibilities and requirements for state agencies when developing and implementing educational programs in facilities under their administration. The chapter title has been added to the code citation under section 3.3(b)2. The code citation has been updated to reflect current rules at N.J.A.C. 6A:17-3.3(f).

N.J.A.C. 6A:17-3.4 Students with educational disabilities

This section describes the responsibilities and requirements for state agencies when enrolling students with educational disabilities in the educational programs at facilities under their administration. The chapter title is proposed to be included after the code citation at N.J.A.C. 6A:17-3.4(a).

N.J.A.C. 6A:17-3.5 Staffing and class size

This section describes requirements for staffing and class size in state facility educational programs. The department is proposing to amend the code citation at N.J.A.C. 6A:17-3.5(d) to reflect current rules.

N.J.A.C. 6A:17-3.6 Facilities

This section describes the requirements for buildings and facilities used for educational programs. The department is proposing to amend the code citation at N.J.A.C. 6A:17-3.6(a) to reflect current rules.

N.J.A.C. 6A:17-3.7 Student records and reports

This section describes the responsibility of school districts and state agencies in regard to the maintenance and transfer of educational records and reports for students in state facilities. The department is proposing to amend the code citations at N.J.A.C. 6A:17-3.7(b) and 3.7(d)5 to reflect current rules.

N.J.A.C. 6A:17-3.8 Approval process for funding

This section describes the application and approval process for the funding of state facility educational programs.

Social Impact

The proposed readoption with amendments will have a positive impact on New Jersey's children. In the case of homeless students, the responsibilities of school districts and the process for resolving disputes related to enrollment are addressed. The proposed readoption with amendments concerns the enrollment of homeless students, the responsibilities of the school district of origin (the school district in which the parent resided prior to becoming homeless) and the process with which to resolve any disputes related to homeless education which may occur. The school district of origin retains the educational responsibilities for the homeless child for the length of time the family remains homeless. This proposed readoption with amendments serves to provide continuity to a homeless child's education by ensuring immediate enrollment and by decreasing the incidence of unnecessary transfers among school districts. This proposal also provides an opportunity for families to concentrate their efforts on stabilizing their lives and finding permanent housing. This stability helps students to perform successfully in school. The support of the designated homeless liaison is designed to assist families in establishing stability, and thus aiding students to complete schooling successfully.

State facility educational programs are established under these rules proposed for re-adoption with amendments to provide educational programs that prepare students in state facilities to receive a State-endorsed high school diploma that meets New Jersey State standards. The Departments of Human Services and Corrections and the Juvenile Justice Commission reported 3,716 students attending their educational programs on October 15, 2005. As most of these placements are shorter than a year's duration, in actuality state facility educational programs serve many more students each year.

By fully addressing the Core Curriculum Content Standards in all school programs within State facilities, students' preparedness to earn a State-endorsed high school diploma is ensured. District boards of education regularly receive educational progress reports on their students from the State facilities. Appropriate records are shared upon the student's release to assure that credit for work completed toward graduation is granted. SFEA programs prepare the majority of students to return to the educational mainstream, as appropriate.

Economic Impact

The proposed re-adoption with amendments will have a positive economic impact on New Jersey, as homeless children and those in state facilities experience fewer disruptions to their education and receive support and encouragement to stay in school, graduate and enter the workforce. The school district of origin maintains responsibility for the education of the child, including tuition. The economic impact upon the school district of origin depends upon the educational placement and the length of time the child remains in placement. However, the school districts of origin include homeless students in their annual Application for State School Aid (ASSA) and therefore receive the equivalent in State aid, as for any other student. When the school district of origin for a homeless or SFEA child is out-of-State or cannot be determined, the State assumes fiscal responsibility for their education.

Considerations of both program quality and fiscal accountability are included in these rules. CEIFA rules require State facility programs to operate on an actual cost basis, and the state agencies must apply for funding based on the actual count of students in their programs on October 15 of the prebudget year. Based on a review of these projected costs, the department establishes an appropriate annual cost per pupil under each program type provided. Required reports and timelines provide the necessary fiscal and outcome information to supplement the program data gathered through the monitoring process. In fiscal year 2005, a total of \$64,239,211 in SFEA aid was provided to the three recipient State agencies based on the October 15, 2004 count of 3,741 students in State facilities.

The proposed re-adoption with amendments will have no new financial impact on the three recipient State agencies or local school districts. The application of "actual cost" provisions in the calculation of SFEA aid was initially implemented in 1997-1998 school year in accordance with the CEIFA rules and serves to hold the agencies' educational budgets' growth to moderate levels.

Federal Statements Standard

The provisions for the education of homeless children and youth were developed to implement the requirements of the Stewart B. McKinney Homeless Assistance Act (P.L. 107-110), to ensure that the educational rights of homeless children are met and that they receive the same education as all other children in New Jersey. As presented, the rules proposed for re-adoption with amendments are consistent with the Federal legislation.

State agencies are eligible to apply for and receive Federal education funds through a number of entitlement programs. In each case, the appropriate agency office of education certified that its programs operate in compliance with Federal standards. The Department of Education, in turn, conducts review and monitoring activities to verify compliance. Currently, the agencies are receiving Federal education funds from the following sources: IDEA; Title I Part D Neglected and Delinquent; Adult Basic Education; and Carl Perkins Vocational Education grants. The rules proposed for re-adoption with amendments do not exceed those Federal requirements. There are no other Federal requirements that impact the proposed re-adoption.

Jobs Impact

The New Jersey Department of Education does not anticipate that the proposed re-adoption with amendments will result in the generation or loss of jobs.

Agriculture Industry Impact

The proposed re-adoption with amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

The proposed re-adoption with amendments does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required. The re-adoption with amendments impacts solely on district boards of education of public schools and State facility education programs and the agencies approved to operate them.

Smart Growth Impact

The proposed re-adoption with amendments will have no impact on the achievement of smart growth or the implementation of the State Development and Redevelopment Plan.

Full text of the re-adoption with amendments follows (with additions in boldface thus; deletions indicated in brackets [thus]):

CHAPTER 17

HOMELESS EDUCATION AND PROGRAMS FOR STUDENTS IN STATE FACILITIES

NEW JERSEY ADMINISTRATIVE CODE

TITLE 6A

EDUCATION

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NEW JERSEY ADMINISTRATIVE CODE

CHAPTER 17. [STUDENTS AT RISK OF NOT RECEIVING A PUBLIC EDUCATION]

HOMELESS EDUCATION AND PROGRAMS FOR STUDENTS IN STATE

FACILITIES

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).

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:

“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.

“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.

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

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.

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, 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.

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 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 informed 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, 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).

6A:17-2.6 School [D]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. [When the parent is homeless due to conditions of domestic violence, the transfer of student records shall be subject to the provisions of N.J.A.C. 6:3-6.]

(e) When a homeless child with educational 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.

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 district(s) following the county superintendent's determination, the parent or the involved 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 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 educational disabilities shall be made pursuant to N.J.A.C. 6A:14, 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 child is currently enrolled for as long as the child and his or her parent remain homeless.

1. 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 appropriate T & E amount, pursuant to N.J.S.A. 18A:7F-3, and any appropriate additional cost factor for special education, pursuant to N.J.S.A. 18A:7F-19.

SUBCHAPTER 3. EDUCATIONAL PROGRAMS FOR STUDENTS IN STATE FACILITIES

6A:17-3.1 Scope

These rules shall apply to all educational programs provided by the Departments of Corrections and Human Services and the Juvenile Justice Commission in accordance with N.J.S.A. 18A:7B-1. Educational programs and services shall be provided to those students in State facilities ages five through 20 and for students with educational disabilities ages three through 21. Programs and services shall be provided to students in State facilities who do not hold a high school diploma or who are not enrolled in a General Educational Development or adult education program as defined in N.J.A.C. 6:30-2, or a college degree program.

6A:17-3.2 Definitions

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

"School district of residence" 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.

"State agency" means the New Jersey Department of Human Services, the New Jersey Department of Corrections or the New Jersey Juvenile Justice Commission as identified in N.J.S.A. 18A:7B-1.

"State facility" means residential and day programs operated by or contracted with the Department of Human Services, the Department of Corrections or the Juvenile Justice Commission.

N.J.A.C. 6A:17-3.3 Education program objectives and requirements

(a) Each State agency shall develop educational programs to complement the primary mission of that State agency and provide educational opportunities that meet the identified needs of students in each State facility. These programs shall be delivered through traditional or individualized education strategies. Individualized programs, which allow high school credit to be awarded through alternative learning experiences, shall be provided in accordance with program completion authorized in N.J.A.C. 6A:8-5.1(a)1ii.

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

2. Provide relevant job training and enhance occupational competencies through vocational education programs where appropriate, pursuant to N.J.A.C. 6A:19, Vocational-Technical Education Programs and Standards.

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

(d) All education programs, with the exception of home instruction pursuant to N.J.A.C. 6A:16-9.1, shall be available at least four hours per day, five days a week, 220 days each year.

(e) The actual number of days a student must attend the educational program shall be determined by the individualized program plan under program completion pursuant to N.J.A.C. 6A:8-5.1(a)1ii and the individualized education program for students with educational disabilities in accordance with N.J.A.C. 6A:14-3.7.

(f) Each State agency shall ensure that home instruction is provided pursuant to N.J.A.C. 6A:16-9.1.

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

(h) Each State agency shall ensure that 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 that all students in that agency's State facilities shall comply with all rules established by the facility pursuant to N.J.S.A. 18A:37-1 and 18A:37-2.

(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 6A:14-4.12.

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

6A:17-3.4 Students with educational disabilities

(a) Each State agency shall ensure that all students with educational disabilities in that State agency's State facilities are provided a free and appropriate public education as set forth under the Individuals with Disabilities Education Act (P.L. 101-476, as amended by P.L. 102-119) and provide special education and related services as stipulated in the

individualized education plan (IEP) in accordance with the rules governing special education at N.J.A.C. 6A:14, Special Education.

1. The class size of special education programs serving solely students with educational disabilities shall be in accordance with N.J.A.C. 6A:14-4

6A:17-3.5 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.

(b) The Office of Education in each State agency shall, with the approval of the Department of Education, ensure that 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 submit 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:9-15 and 16[:11-13].

(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:17-3.8(c).

2. The Department of Education shall grant exceptions on a case-by-case basis using the following criteria:

i. The requested exception justifies the need for an alternate program structure;

ii. The requested exception demonstrates that the specialized needs of the students served will continue to be met; and

iii. The requested exception insures the necessary supervision, security, and safety of the students served.

6A:17-3.6 Facilities

(a) Each State agency shall ensure that all buildings and facilities used for educational programs comply with the provisions of N.J.A.C. 6[:22]A:26, Educational Facilities, where applicable.

(b) Each State agency shall ensure that all educational programs are provided in locations separate from sleeping areas, except where appropriate for instructional or medical reasons.

6A:17-3.7 Student records and reports

(a) When a student is placed in a State facility, the identified school district of residence shall provide the State facility with the student's educational records, district graduation requirements, attendance standards and the name of a contact person within 10 days of notification of admission.

(b) Each State agency shall maintain student records in accordance with N.J.A.C. 6[:3-2]A: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:4-65.

(c) Each State agency shall ensure that the school district of residence is to be 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) Each State agency shall ensure the transfer of educational records and a final progress report for all students exiting a State facility to the school district of residence within 10 days, in order to ensure full and appropriate credit for work completed. The report shall include a designated contact person and the following information which is necessary to formulate an appropriate educational program and ensure that credit for work completed is granted:

1. Statewide assessment and diagnostic findings;
2. Credit earned towards high school graduation requirements pursuant to N.J.A.C. 6A:8-5.1;
3. Grade level equivalent;
4. Vocational training experience;

5. Individualized Program Plan (IPP) pursuant to N.J.A.C. 6A:16-[8.2]9.2(a)2; and
6. Individualized Education Program (IEP) for students with educational disabilities pursuant to N.J.A.C. 6A:14-3.7.

6A:17-3.8 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, as amended by the Comprehensive Educational Improvement and Financing Act of 1996, N.J.S.A. 18A:7F-1 et seq.
- (b) Each State agency shall submit annually to the Department of Education, the resident enrollment of students in that agency's State facility education programs on the last school day prior to October 16 of the prebudget year.
- (c) By December 15 of each prebudget year, pursuant to N.J.S.A. 18A:7F-1 et seq., each State agency shall submit a detailed education program plan and budget to the Department of Education for approval for all programs and services under its jurisdiction on a form prescribed and provided by the Commissioner of Education. The plan shall include, at a minimum, a program description, staffing patterns and facility level budget information.
- (d) The Commissioner of Education, prior to March 1 of the prebudget year, 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. These payments may be withheld pursuant to N.J.S.A. 18A:7B-5, as amended by the Comprehensive Educational Improvement and Financing Act of 1996, N.J.S.A. 18A:7F-1 et seq.

(f) Each State agency shall use the entitlement to support their 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 requests for revisions to the approved education program plan and budget, pursuant to N.J.S.A 18A:7F-1 et seq., to the Commissioner of Education. The following revisions require prior written approval from the Department of Education before implementation:

1. Budget category expenditure variances which exceed \$10,000 or 10 percent of the approved amount in any budget line;
2. Any additions or deletions to approved contracts for services; and
3. Any additions, deletions or substitutions of approved amounts for the purchase of instructional or non-instructional equipment.

(h) Each revision under (g) above shall be fully documented and contain a certification from the Office of Education in that State agency and the Commissioner or Executive Director of that State agency, 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 expenditures other than salary shall be supported by a vendor's invoice, a verification of receipt, and evidence that 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 will 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.