

Notice of Adoption for N.J.A.C. 6A:12, Interdistrict Public School Choice

The following is the accessible version of the notice of adoption for the readoption with amendments at N.J.A.C. 6A:12. The notice of adoption document includes two sections – [comments and responses](#) and [amendments made upon adoption](#).

Education

State Board of Education

Interdistrict Public School Choice Program

Readoption with Amendments: N.J.A.C. 6A:12

Adopted Recodification with Amendments: N.J.A.C. 6A:12-4.1 as 3.4

Adopted Repeals: N.J.A.C. 6A:12-3 and 6

Proposed: April 15, 2024, at 56 N.J.R. 533(a).

Adopted: September 5, 2024, by the State Board of Education, Kevin Dehmer, Acting Commissioner, Department of Education and Acting Secretary, State Board of Education.

Filed: September 5, 2024, as R.2024 d.095, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 18A:36B-1 et seq., specifically 18A:36B-14 through 24.

Effective Dates: September 5, 2024, Readoption;

October 7, 2024, Amendments, Recodification, and Repeals.

Expiration Date: September 5, 2031.

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received from members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Maggi Downham, Co-Executive Director, New Jersey Interdistrict Public School Choice Association
2. Valarie Smith, Co-Executive Director, New Jersey Interdistrict Public School Choice Association

3. Jean Public
4. David Bander, Esq., Kaitlyn Dunphy, Esq., and Katrina Homel, Esq., associate directors of Legal Services and Member Rights, and Elisabeth Yucis, Associate Director of Professional Development and Instructional Issues, New Jersey Education Association

1. Comment: The commenter supported the proposed amendments at N.J.A.C. 6A:12. (2)

Response: The Department appreciates the support.

2. Comment: The commenter stated that the Interdistrict Public School Choice (choice program) was created to give students the opportunity to attend schools beyond the boundaries of restricted attendance zones. Citing the chapter's purpose at N.J.A.C. 6A:12-1.1, the commenter also stated that the choice program is fundamental to improving equity in New Jersey's kindergarten through grade 12 education system and can be a primary vehicle for achieving greater diversity if the choice program is allowed to flourish. (2)

Response: The commenter's statement that the choice program is fundamental to improving equity in New Jersey's school system is not a stated goal of the choice program, pursuant its authorizing statute at N.J.S.A. 18A:36B-14 et seq. The Department proposed an amendment at N.J.A.C. 6A:12-1.1 to delete the reasons for the choice program and its impact because they are not relevant to the chapter's purpose.

3. Comment: The commenter requested that the Department adopt new rules at N.J.A.C. 6A:12-6.1, as proposed for recodification, to require the transportation of choice students to be performed by employees of the school district providing transportation. The commenter stated that the requested change would allow the school district providing

transportation to directly supervise the employees, assign them appropriately, and address accommodations requested by parents. The commenter also stated that the requested change would ensure continuity and stability in the transportation services provided to choice students and would ensure that the employees providing transportation have the appropriate credentials and required background checks. (4)

Response: The Department disagrees that the requested change is necessary. The existing rules regarding transportation of choice students are in accordance with N.J.S.A.

18A:36B-22 and N.J.A.C. 6A:27-4, which do not require transportation services to be provided by a school district employee. The existing rules are consistent with transportation services provided to students who attend school outside of the resident school district, including charter schools, county vocational school districts, and approved private schools for students with disabilities.

4. Comment: The commenters expressed support for the choice program and its expansion so more students can attend schools outside their resident school districts. The commenters provided three examples of success stories from the choice program: Glassboro High School, which enables students to take college courses and graduate with college credits, Sterling High School, which has been able to maintain its Reserve Officers' Training Corps (ROTC) program despite previous declining enrollment, and the Deal Borough School District, which has a low per pupil cost. (1 and 2)

Response: The Department recognizes the positive impact that participation in the choice program has had for choice districts and choice students.

5. Comment: The commenter expressed frustration that the Department has not engaged in efforts to expand the number of participating choice districts since 2013, when the

Department first notified participating choice districts of an enrollment limit. The commenter described outreach efforts to parents and school districts that the Department engaged in during the choice program's expansion in 2012. The commenter stated that the State-imposed enrollment limit prohibiting expansion of the choice program has resulted in choice districts with empty choice seats and school districts and students interested in participating in the choice program, but are unable to do so. The commenter also stated that the decision to limit choice enrollment has especially had a negative impact on choice districts that joined the program right before the enrollment limit was instituted, thereby restricting the scale up of their choice programs. The commenter further stated that the limit has resulted in several school districts no longer participating in the choice program, which resulted in fewer participating choice districts. The commenter asked the State Board of Education (State Board) to support the elimination of the limit on choice enrollment and new school district applications. (1)

Response: The Department is required to manage choice student enrollment based on the funding approved by the New Jersey Legislature in the annual appropriations act.

Beginning in Fiscal Year 2014-2015, funding for choice enrollment was limited by the New Jersey Legislature due to exponential choice program enrollment growth. Therefore, the Department must limit the number of available choice seats in a consistent, fair, and transparent manner, by not increasing, with rare exceptions, the number of choice seats in participating choice districts and prohibiting new school districts from joining the choice program. There were 105 participating choice districts in Fiscal Year 2013-2014, which increased to a high of 131 in Fiscal Year 2015-2016, the last year when new school districts were allowed to join the choice program. There are 119 choice districts in Fiscal Year

2023-2024. The reasons provided by former choice districts for leaving the choice program are varied, and include declining choice program enrollment, moving to a parent-paid tuition model, and becoming a non-operating school district, as well as the enrollment limit placed on choice districts. Due to rising per pupil choice funding, the Department has not added new choice districts to replace those that have left the choice program.

6. Comment: The commenter asked the State Board to support the goal of allowing choice districts to enroll students on a parent-paid tuition basis. (1)

Response: N.J.S.A. 18A:36B-21.b explicitly prohibits a choice district from being eligible to enroll students on a tuition basis pursuant to N.J.S.A. 18A:38-3 while participating in the choice program.

7. Comment: The commenter contended that the Department was unable, at the February State Board meeting, to provide requested information regarding wait lists for the choice program, despite the requirement at N.J.S.A. 18A:36B-24 for the Commissioner to annually report, to the State Board, the Legislature, and the Joint Committee on the Public Schools, on the choice program's effectiveness. (1)

Response: The Department provided the following information at the March 6, 2024, State Board meeting based on a choice district survey conducted on the student application cycle for the 2023-2024 school year: The number of choice student applicants was 3,595, and 1,484 (41 percent) were accepted. The number of applicants on waitlists ranged from zero (16 percent of choice districts) to 21 or above (23 percent of choice districts). Forty-nine percent of choice districts indicated they had a waitlist of between one and 10 applicants.

8. Comment: The commenter asked why enrollment must be completed by December 31 of the year prior, but funding is determined by the following October 15 enrollment count. The commenter contended that this date is too early for most parents who do not plan that far in advance and requested that the date be changed to mirror that for charter schools, where students can enroll throughout the year. (2)

Response: Pursuant to N.J.S.A. 18A:36B-20.a, student applications to choice districts must be submitted to the sending district no later than the date specified by the Commissioner. Pursuant to N.J.A.C. 6A:12-4.3(a), as proposed for readoption with amendments, the student application timeline is set by the Commissioner each year no later than September 1, giving interested parents/guardians and choice districts the ability to plan accordingly. The Department's timeline includes many steps culminating in the submission of the choice district's projected 2024-2025 fiscal year choice enrollment data submission by the end of January. The data are used to develop the Governor's annual budget proposal, thereby ensuring funding for the choice program is available. As a result, the Department must set tight deadlines.

9. Comment: The commenter stated that the choice program was presented as a pilot program and that the commenter does not think it has worked. (3)

Response: The Interdistrict Public School Choice Program Act was initially established as a five-year pilot program in 1999. The statute was amended in 2010 to expand the choice program and to make it permanent.

10. Comment: The commenter opposed the choice program because it is very expensive and has contributed to the increase in school funding. (3)

Response: The choice program is required pursuant to N.J.S.A. 18A:36B-14 et seq. Each

year, the Legislature passes the annual appropriations act, which determines the funding for the choice program. Therefore, any change to the choice program or the funding level would require an act of the Legislature.

11. Comment: The commenters stated that it is less expensive for the State to fund choice students attending Deal Borough School District than for students attending Asbury Park School District's elementary schools. The commenters provided per pupil expenditures for the Asbury Park School District's elementary schools and the Deal Borough School District, which is a choice district that receives choice students from Asbury Park, to support the commenters' assertion. (1 and 2)

Response: The comment is outside the scope of the rulemaking.

12. Comment: The commenter stated that the statutorily required annual report to the Legislature has not been produced since the choice program's expansion in 2010. The commenter also stated that the Department was unable to provide the commenter with demographic enrollment data and, instead, referred the commenter to the Office of the Attorney General for the data. (1)

Response: The comment is outside the scope of the rulemaking.

Summary of Agency-Initiated Changes:

1. The Department is changing N.J.A.C. 6A:12-2.2(a)2 upon adoption to not delete "kindergarten," as proposed. The Department also changes the rule to add "or" after "preschool" to align the rule with N.J.S.A. 18A:36B-20.a.
2. The Department is changing N.J.A.C. 6A:12-3.4(d) upon adoption to delete the two references to "of resident students who are presently enrolled in and attending the choice

district.” The language to be deleted is unnecessary because of the definition of “eligible sibling” at N.J.A.C. 6A:12-1.3.

Federal Standards Statement

The rules readopted with amendments, recodification, and repeals do not exceed Federal standards, as there are no Federal laws or regulations that impact the choice program.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:12.

Full text of the adopted amendments and recodification follows (addition to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

Subchapter 2. Choice District and Choice Student Eligibility Criteria

6A:12-2.2 Eligibility criteria for students

(a) To be eligible to participate in the choice program, a student shall be enrolled at the time of application in preschool through grade 12 in a school of the sending district and shall have attended school in the sending district for at least one full academic year immediately preceding enrollment in a choice district, including time spent at any school that a student in a particular district of residence is required by law to attend.

1.(No change from proposal.)

2. The one-year requirement shall not apply to an eligible sibling applying to enroll in preschool ***or kindergarten*** in a choice district.

3. (No change from proposal.)

(b)-(c) (No change from proposal.)

Subchapter 3. Choice Student Admissions

6A:12-3.4 Sending district restrictions on student participation in a choice program

(a)-(c) (No change from proposal.)

(d) If a sending district has received approval from the Commissioner, or the Commissioner's designee, to impose a limit on the number of students participating in the choice program and the notices of student intention to participate in the choice program exceed the established limit, before conducting the lottery, the sending district may give preference to eligible siblings *[of resident students who are presently enrolled in and attending a choice district]*. If the choice district elects to give enrollment preference to eligible siblings of choice students, the sending district also shall give preference to eligible siblings *[of resident students who are presently enrolled in and attending the choice district]*. This provision shall apply only to choice students and eligible siblings who would be attending the same choice district or two choice districts that are in a send-receive relationship.

1.-2. (No change from proposal.)

(e)-(g) (No change from proposal.)