

Proposed Readoption with Amendments of N.J.A.C. 6A:32, School District Operations

The following is the accessible version of the proposed readoption with amendments of N.J.A.C. 6A:32. The proposal level document includes three sections – [comments and responses](#), [summary of the proposed rulemaking](#) and [text of the chapter's rules and proposed amendments](#).

**State Board of Education
Administrative Code
Comment/Response Form**

This comment and response form contains comments from the June 16, 2021, meeting of the State Board of Education when the rulemaking was considered at Second Discussion Level.

Topic: School District Operations **Meeting Date:** July 14, 2021
Code Citation: N.J.A.C. 6A:32 **Level:** Proposal
Division: Field Services **Completed by:** Division of Field Services

Summary of Comments and Agency Responses:

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

- A. Kathy Goldenberg, President, State Board of Education
- B. Dr. Nedd J. Johnson, Member, State Board of Education
- 1. John D. Rue, Esq., President and General Counsel, The Innisfree Foundation
- 2. Amy Lin-Rodriguez, Superintendent, Hudson County Schools of Technology

1. **Comment:** The commenter asked if the Department is aware of any concerns with the proposed readoption with amendments of N.J.A.C. 6A:32, School District Operations. **(A)**

Response: The Department has received written comments with concerns related to proposed N.J.A.C. 6A:32-13, Virtual and Remote Instruction. Please see Comments 5 through 8 below and the Department’s responses.

2. **Comment:** The commenter asked if the Department has examined how to measure student instruction other than requiring students to be present for a specific amount of time in order to earn credits for a course, which is often referred to as “seat time.” The commenter provided the example of the requirement for students in grades one through 12 must have 150 minutes per week of instruction in health and physical education. The commenter also stated that the COVID-19 pandemic has shown that students can learn with technology and other tools and not only while sitting in a classroom. The commenter further asked if the Department has considered utilizing this opportunity to change some of the traditional systems and tools that have been in place for well over 100 years, such as seat time for attainment of course credit. **(B)**

Response: The Department agrees that the COVID-19 pandemic has demonstrated that many students can thrive in nonconventional educational settings. Existing N.J.A.C. 6A:8-5.1(a)2 provides school districts with the flexibility to provide high school students with individualized learning opportunities that meet or exceed the New Jersey Student Learning Standards as part of the minimum 120 credits required for graduation. Individual learning opportunities can include, but are not limited to, independent study, online learning, study abroad programs, student exchange programs and structured learning experiences. Additionally, the 150 minutes per week for the health and physical

education is required by State law; therefore, changes to that curricular area would require a statutory amendment.

3. **Comment:** The commenter supported the proposed amendments at N.J.A.C. 6A:32-2.1 and 7 allowing public access to student records once all personally identifiable information has been redacted. The commenter stated that allowing public access to de-identified records through the Open Public Records Act (OPRA) promotes accountability. The commenter also stated that the Department's proposed amendments allow for access to such records. The commenter further stated that access to redacted student records assists parents with obtaining information about a school district. The commenter provided an example of a parent using redacted student records obtained through OPRA to verify that a school district does not provide a service, program, or placement for any student after a parental request for the service, program, or placement has been denied. **(1)**

Response: The Department appreciates the support for the proposed amendments.

4. **Comment:** The commenter stated that the proposed amendments accurately reflect the Department's intent, as stated in its amicus brief related to *L.R. v. Camden City Public Schools*, 238 N.J. 547 (2019), to align its regulations with the Federal regulations related to redaction and disclosure of student records under the Family Educational Rights and Privacy Act of 1974. The commenter further stated that the proposed amendments balance the interests of privacy and transparency. **(1)**

Response: The Department agrees with the commenter that the proposed amendments align the interests of both privacy of student information and transparency of information to the public.

5. **Comment:** The commenter requested the reconsideration of the proposed new rules at N.J.A.C. 6A:32-13, which will allow school districts to implement a Department-approved program for virtual or remote school days under the following conditions: a declared state of emergency, a declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days. The commenter request that the proposal be revised to permit a school district that has an approved remote or virtual learning program in place to use virtual or remote instruction during inclement weather and other special circumstances, including circumstances lasting less than three consecutive days, and to count the days toward the 180-day minimum school year requirement. **(2)**

Response: The Department proposed N.J.AC. 6A:32-13.1 to align with P.L. 2020, c. 27, which was enacted in response to the COVID-19 pandemic. The law requires the Department to establish rules that allow a district board of education to utilize a Department-approved program for virtual or remote instruction during a school closure lasting more than three consecutive school days due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure. In accordance with the law, school districts can use virtual or remote instruction to fulfill the 180-day requirement established at N.J.S.A. 18A:7F-9.b only under the specified circumstances.

6. **Comment:** The commenter stated that a reading of N.J.S.A. 18A:7F-9 that permits the district board of education to approve programs of remote and virtual instruction outside of an emergency situation, and in circumstances where remote learning is not required for three consecutive days or more, is a fair reading of that statute. The commenter also

requested that proposed N.J.A.C. 6A:32-13.1 be amended and/or clarified to permit such an option. (2)

Response: The Department disagrees with the commenter's interpretation of N.J.S.A. 18A:7F-9.b. The statute was amended by P.L. 2020, c. 27, which first requires the school district to be closed for more than three consecutive school days due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, to be permitted use virtual or remote instruction toward the 180-day requirement. Once the parameters for allowing the use of a virtual or remote school day are met, then the school district may use the program approved by the Commissioner for virtual or remote instruction.

7. **Comment:** The commenter stated that the proposed regulations at N.J.A.C. 6A:32-13 do not provide flexibility to schools districts. The commenter also stated that school districts will risk having instructional days not count toward the 180-day requirement if not permitted to use approved programs for virtual or remote instruction in the event that a closure of school buildings does not last for three consecutive days. The commenter requested that the proposed regulations would be amended to allow a district board of education to approve the use of virtual or remote instruction outside of an emergency context to count toward the 180-day requirement and to limit the use of those days to no more than 10 days per school year. The commenter stated that this change would provide school districts with flexibility to meet local needs. (2)

Response: The Department appreciates the commenter's suggestions. However, the use of virtual or remote instruction to meet the 180-day requirement at N.J.S.A. 18A:7F-9.b. is established through law. The commenter's suggested amendments at N.J.A.C. 6A:32-13 would require a change to the authorizing State law, P.L. 2020, c. 27 and N.J.S.A. 18A:7F-9.b.

8. **Comment:** The commenter stated that, given the importance of differentiation of instruction for student, it must be acknowledged that some students have thrived in the virtual/hybrid environment and some students have shown significant improvement in achievement, participation, and personal accountability. (2)

Response: The Department agrees with the commenter that some students thrive in a virtual environment. The proposed regulations do not limit a school district's ability to offer differentiated learning environments to individual students. For example, existing N.J.A.C. 6A:8-5.1(a)2 provides school districts with the flexibility to provide high school students with individualized learning opportunities that meet or exceed the New Jersey Student Learning Standards as part of the minimum 120 credits required for graduation. Individual learning opportunities can include, but are not limited to, independent study, online learning, study abroad programs, student exchange programs and structured learning experiences.



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Proposal Level
July 14, 2021

ANGELICA ALLEN-McMILLAN, Ed.D.
Acting Commissioner

To: Members, State Board of Education

From: Angelica Allen-McMillan, Ed.D., Acting Commissioner

Subject: N.J.A.C. 6A:32, School District Operations

Reason for Action: Readoption with Amendments

Authority: N.J.S.A. 18A:4-10 and 15, 18A:6-50, 18A:10-6, 18A:12-21 et seq., 18A:13-14, 18A:16-1, 18A:17-14 through 14.3, 15, 17, 20, and 32, 18A:22-14 and 19, 18A:24-11, 18A:28-9 and 13, 18A:29-9, 11, and 13 to 16, 18A:38-1, 18A:40-12.1, P.L. 2020, c. 27, and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (P.L. 115-141)

Sunset Date: January 16, 2022

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:32, School District Operations, with amendments and new rules as noted in this Summary. The chapter's rules are designed to assist school districts in governing the daily operation of schools and to provide guidance in the creation of school policies, procedures, and services to meet staffing and operational needs. Pursuant to N.J.S.A. 52:14B-5.1.c(2), N.J.A.C. 6A:32 expires on January 16, 2022.

In 2004, the Department presented a discussion paper to the State Board that outlined the major issues to consider in developing rules to govern the daily operation of school districts. This discussion paper was published as a pre-proposal in the New Jersey Register. The discussion paper outlined the Department's plan to combine the previous rules at N.J.A.C. 6:3, School Districts, N.J.A.C. 6:8, Thorough and Efficient System of Free Public Schools, and N.J.A.C. 6A:9-7, Paraprofessional Approval, in a new chapter at N.J.A.C. 6A:32, School District Operations. The creation of the chapter on school district operations was part of the Department's comprehensive review of all chapters of Administrative Code in Title 6 and move them to Title 6A.

Subchapter 15, Criminal History Review, was adopted as new rules effective October 5, 2009. The rules established a fee for criminal history background checks for all applicants that are processed through the Department. The subchapter, as well as Subchapter 12, Annual Reporting and Planning Requirements, and Subchapter 14, State and Federally Mandated Programs and

Services, were repealed in 2013 because the subchapters were outdated or duplicative of State and Federal statutes.

The proposed amendments will align the calculation of a day present or absent for student attendance with Federal guidance under the Elementary and Secondary Education Act (ESEA), P.L. 89-10, as reauthorized by the Every Student Succeeds Act (ESSA), P.L. 114-95. The proposed amendments will also align school district reporting requirements with the chronic absenteeism indicator in New Jersey's ESSA State Plan. ESSA requires states to ensure that all students have equitable access to high-quality educational resources and opportunities, and that all schools are improving overall student performance and closing persistent achievement gaps. To receive Federal funding, most of which goes directly to school districts, each state is required every few years to submit a state plan to the U.S. Department of Education detailing how the state will comply with the ESSA.

The proposed amendments advance the Department's vision of increasing educational equity for all students by aligning State regulations with the ESSA, which was enacted to ensure equitable educational programs and services for all students. In New Jersey's ESSA State Plan, the Department identified chronic absenteeism as its indicator of school quality and student success. The alignment will enhance the reporting of valid and reliable student attendance data necessary to implement a system of meaningful differentiation when assessing school performance, as required under ESSA. Chronic absenteeism is factored into the summative rating used to identify schools in need of comprehensive and targeted support and improvement. Additionally, school-level chronic absenteeism is included in the annual School Performance Report for each school and school district.

As stated in the ESSA State Plan, chronic absenteeism can be turned around at the school level by engaging families, leveraging staff mentors for student support, utilizing data, and providing a school culture and climate that encourages students to come to school every day. Chronic absenteeism also was the measure that many stakeholders asked the Department to use within the ESSA school accountability system. N.J.A.C. 6A:32 sets forth the rules for calculating chronic absenteeism.

The Department also proposes to amend N.J.A.C. 6A:32-2, Definitions, and N.J.A.C. 6A:32-7, Student Records, in response to a recent decision by the New Jersey Supreme Court that noted State regulations do not incorporate the concept of personally identifiable information or include a procedure whereby student records may be disclosed following the redaction of personally identifiable information. The New Jersey Supreme Court determined that any document containing student information could not be disclosed, even if redacted, because of the absence of a definition of "personally identifiable information." The proposed amendments, including a proposed definition for "personally identifiable information," will further protect student privacy while ensuring the public continues to have access to government records.

The Department proposes amendments throughout the chapter to eliminate gender-specific pronouns.

The following is a summary of the rules proposed for readoption and the proposed amendments and new rules. Unless otherwise indicated, the proposed amendments are to update cross-references to the New Jersey Administrative Code citations for State and Federal statutes citations, clarity, and for grammatical and stylistic improvement.

Subchapter 1. Scope and Purpose

This section states that the chapter's rules are intended to provide assistance to district boards of education and school district administrators regarding the daily operation of schools and school districts.

Subchapter 2. Definitions

N.J.A.C. 6A:32-2.1 Definitions

This section defines terms found in the chapter.

The Department proposes to amend the definition of "adult student," which means a person who is at least 18 years of age, or is attending an institution of postsecondary education, or is an emancipated minor. The Department proposes to delete "or is attending an institution of postsecondary education" because high school students under the age of 18 can be enrolled in an institution of postsecondary education due to dual enrollment agreements between high schools and institutions.

The Department proposes to delete the definition for "average daily attendance" (ADA), which means the total number of days that a student is present in school divided by the total possible number of days of attendance. Existing N.J.A.C. 6A:32-8.2(g), which specifies how to calculate the ADA, will be recodified with amendments as N.J.A.C. 6A:32-8.5. The calculation of average daily attendance will be self-explanatory and, therefore, will not require a definition.

The Department proposes to amend the definition of "chief school administrator," which means the superintendent of schools or the administrative principal if there is no superintendent. The Department proposes to add "[i]n Subchapters 7, 8, and 13, 'chief school administrator' includes charter school and renaissance school project lead persons." The proposed amendments will clarify which subchapters apply to charter school and renaissance school project boards of trustees.

The Department proposes a definition for "days in membership" to mean the number of school days in session in which a student is enrolled. The proposed definition also states that a student's membership begins on the first possible day of attendance following enrollment during the school year, notwithstanding the actual day the student was recorded as present for the first time. For illustrative purposes, a student who is enrolled in a school district on the 30th school day and the next school day is the first possible day of attendance would have 150 days in membership (in a 180-day school year), even if the student does not start attending school until the 35th school day. The proposed definition for "days in membership" will assist district boards of education in reporting accurate attendance data to the Department in accordance with N.J.A.C. 6A:32-8.4.

The Department proposes to amend the definition of "executive county superintendent," which means a county superintendent of schools pursuant to N.J.S.A. 18A:7-1 et seq. The Department proposes to add "person appointed to serve as executive" before "county" to more closely align the definition with the authorizing statute at N.J.S.A. 18A:7-1 et seq.

The Department proposes to amend the third sentence in the definition of "parent," which states that 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. The Department proposes to replace "foster" with "resource family" to update

terminology. “Resource family care” is synonymous with “foster care” as defined in the ESSA, and found elsewhere in the New Jersey Administrative Code and in the New Jersey Statutes.

The Department proposes to add a definition for “personally identifiable information” to align the chapter with N.J.S.A. 18A:36-35 and 34 C.F.R. Part 99, which are the Federal regulations that implement the Federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g. The Department proposes the definition for “personally identifiable information” to mean, but not be limited to, the following:

1. The student’s name;
2. The name of the student’s parent(s), or other family members;
3. The address of the student or the student’s family;
4. The email address of the student, the student’s parent(s), or other family members;
5. The telephone number of the student, the student’s parent(s), or other family members;
6. A personal identifier, such as the student’s Social Security number, student number, or biometric record;
7. A photo of the student;
8. The location and times of class trips;
9. Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;
10. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty; or
11. Information requested by a person who the district board of education, or private agency that provides educational services by means of public funds, reasonably believes knows the identity of the student to whom the student record relates.

The Department proposes to add a definition for “remote instruction” to mean the provision of instruction occurring when the school building is closed and the student and the instructor are in different locations due to the closure of the school buildings operated by the district board of education, charter school, renaissance school project, or approved private school for students with disabilities (APSSD). The proposed definition also states that the closure of the facility(ies) shall be pursuant to N.J.S.A. 18A:7F-9 or 18A:46-21.1 and occur for more than three consecutive school days due to a declared state of emergency, a declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure. The proposed definition will update the chapter to conform with N.J.S.A. 18A:7F-9 or 18A:46-21.1, which allows virtual or remote instructional days to count toward the 180-day statutory minimum under specified circumstances.

The Department proposes to amend the definition of “student record,” which 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. The definition also states that 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. The definition excludes information recorded by certified school personnel solely as a memory aid and not for the use of a second party. The Department proposes to add at the end “[i]n the absence of any ‘information related to an individual student,’ the document(s) no longer meets the definition of ‘student record.’”

The Department proposes to amend the definition of “teaching staff member,” which states the definition holds the same meaning as the term is defined in N.J.S.A. 18A:1-1 and N.J.A.C. 6A:9, Professional Standards. The Department proposes to delete “and N.J.A.C.6A:9, Professional Standards” because the definition of “teaching staff member” in the certification rules cites the statute, which is already contained in this definition.

The Department proposes to add a definition for “virtual instruction” to mean the provision of active instruction when the school building is closed and the student and the instructor are in different locations and instruction is facilitated remotely through the internet and computer technologies due to the closure of the school buildings operated by the district board of education, charter school, renaissance school project, or APSSD. The proposed definition states that the closure of the facility(ies) shall be pursuant to N.J.S.A. 18A:7F-9 or 18A:46-21.1 and occur for more than three consecutive school days due to a declared state of emergency, a declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure. The proposed definition will bring the chapter into conformance with N.J.S.A. 18A:7F-9 or 18A:46-21.1

Subchapter 3. District Boards of Education – General

N.J.A.C. 6A:32-3.1 Special meetings of district boards of education

This section establishes the steps for a district board of education to convene a special meeting. The rules also set forth the requirements related to the public notice of a special meeting.

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

This section sets forth the annual requirements for district boards of education and charter school boards of trustees related to the Code of Ethics.

The Department proposes to amend the section’s heading to add “or renaissance school project” after “charter school” because a renaissance school project board of trustees also is subject to the section’s requirements. The same amendment is proposed at N.J.A.C.6A:32-3.2(a), (a)2 and 3, and (b).

The Department proposes an amendment at N.J.A.C.6A:32-3.2(a)3, which requires district boards of education and charter school boards of trustees to provide documentation that each member of the district board of education or charter school board of trustees has received and reviewed the Code of Ethics. The Department proposes to replace “Provide” with “Maintain” to clarify that the documentation must be maintained at by the district board of education or charter school or renaissance school project board of trustees.

N.J.A.C. 6A:32-3.3 Boards of school estimate

This section establishes that the mayor of a municipality with a Type I school district is the presiding officer of the board of school estimate. The rules also allow the members present at a meeting of the board of school estimate to elect a presiding officer pro tem if the mayor is absent.

Subchapter 4. Employment of Teaching Staff

N.J.A.C. 6A:32-4.1 Employment of teaching staff

This section requires a district board of education or private agency that provides educational services by means of public funds to establish guidelines for hiring all staff. The rules also require all teaching staff members employed by a district board of education or private agency that provides educational services by means of public funds to hold a valid certificate issued by the State Board of Examiners.

N.J.A.C. 6A:32-4.2 Approval of paraprofessional staff

This section requires statements of assurance affirming that all paraprofessional staff hired were employed as instructional or health and safety personnel or in accordance with the requirements of individualized education programs. The statements shall be submitted biannually to the executive county superintendent no later than September 30 and January 31.

The Department proposes to amend N.J.A.C. 6A:32-4.2 to specify that the district board of education is required to submit the statement of assurance. The Department also proposes to amend the regulation to delete “biannually” and to add “each school year” at the end. The proposed amendments will clarify that the statement of assurance must be submitted twice per school year.

N.J.A.C. 6A:32-4.3 Access to personnel records

The section requires a district board of education or private agency that provides educational services by means of public funds to make employee records and information available for public access pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., and in accordance with N.J.S.A. 18A:6-120.d and 121.d.

Subchapter 5. Seniority

N.J.A.C. 6A:32-5.1 Standards for determining seniority

This section sets forth how a school district calculates seniority for teaching staff members.

The Department proposes to amend the first sentence of N.J.A.C.6A:32-5.1(b), which requires seniority to be determined according to the number or fraction of academic or calendar years of employment in the school district in specific categories “as hereinafter provided.” The Department proposes to replace “as hereinafter provided” with “at (l) below” to clarify which categories are used for determining seniority. The Department also proposes to add “at (l) below” at N.J.A.C.6A:32-5.1(f), (g), and (h). The Department proposes to amend the second sentence of N.J.A.C.6A:32-5.1(b), which requires 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 granted for study or research except for leaves of absence or suspension resulting from confirmed discipline to be credited toward seniority. The Department proposes to relocate the reference to “leaves of absence or suspension resulting from confirmed discipline” to the third sentence to clarify that this type of leave of absence or suspension does not qualify for seniority credit.

The Department proposes to amend N.J.A.C.6A:32-5.1(e), which states that the holder of an emergency certificate shall not be entitled to seniority rights, but the years of employment

under the emergency certificate shall count toward seniority when the employee becomes the holder of a standard certificate. The subsection also states that any period of service under a provisional certificate shall also be counted toward seniority upon acquisition of a standard certificate. The Department proposes to amend the subsection so it is clear that an employee who holds an emergency or provisional certificate can count the time worked under the two types of certificates toward seniority when the employee obtains a standard certificate.

Subchapter 6. School Employee Physical Examinations

The Department proposes to amend the subchapter's heading to add "or psychiatric" after "physical" to more accurately reflect the subchapter's content as proposed for amendment.

N.J.A.C. 6A:32-6.1 Scope and purpose

This section describes the subchapter's scope and purpose, which is to designate the minimum assessments to be used by district boards of education in establishing physical examinations of candidates for employment and school district employees. The subchapter applies to district boards of education and private agencies that provide educational services by means of public funds.

The Department proposes to amend N.J.A.C. 6A:32-6.1(a) to add "physical or psychiatric examinations of" before "school district employees." The proposed amendment will clarify that while a district board of education can require school district staff to undergo a physical or psychiatric examination, it can only require a candidate for employment to undergo a physical examination.

N.J.A.C. 6A:32-6.2 Policies and procedures for employee physical examinations

This section requires school districts to develop policies and procedures regarding physical examinations of candidates for employment. The section also requires school districts to develop policies and procedures regarding physical examinations of current employees if the school districts choose to require examinations of current employees. The rules also require that school districts notify school employees and candidates regarding the requirements for physical examinations and establish procedures to assure confidentiality during the collection, transmission, and storage of employee and candidate medical records.

The Department proposes to recodify the portion of the rule that requires a school district to adopt written policies regarding physical examination of candidates for employment as new N.J.A.C. 6A:32-6.2(a). The Department also proposes at new N.J.A.C. 6A:32-6.2(a) to require the policies to include the notification to candidates for employment regarding the requirements for physical examinations. The Department further proposes to require the established procedures to assure confidentiality during the collection, transmission, and storage of medical records of candidates for employment.

The Department proposes to recodify as N.J.A.C. 6A:32-6.2(b) the remainder of the existing rule, which requires the written policies to include physical examinations of school employees if the school district chooses to require the examinations. The existing rule also requires the policies to include the notification to school employees and candidates regarding the physical examination requirements and to establish procedures to assure confidentiality during the collection, transmission, and storage of medical records of school employees and candidates. The Department proposes at N.J.A.C. 6A:32-6.2(b) to delete the references to "candidates." The Department proposes at N.J.A.C. 6A:32-6.2(b) and in the section heading to add "or psychiatric" after "physical" because N.J.S.A. 18A:16-2.a allows a district board of education to require

individual psychiatric or physical examinations of any employee whenever, in the district board of education's judgment, an employee shows evidence of deviation from normal, physical or mental health. The same amendment is proposed at N.J.A.C. 6A:32-6.3, where necessary.

The proposed recodifications and amendments will separate the policies related to physical examinations for candidates for employment from the policies related to physical examinations of school employees. The proposed amendments also will clarify that district boards of education can require both physical and psychiatric examinations of employees. The proposed amendments will align the section with the authorizing statute at N.J.S.A. 18A:16-2.

N.J.A.C. 6A:32-6.3 Requirements of physical examinations

This section establishes the parameters for a district board of education to administer or require physical examinations of candidates for employment and physical examinations of current employees.

Subchapter 7. Student Records

N.J.A.C. 6A:32-7.1 General considerations

This section describes the general operational procedures for student records, including access to records and what must be included in the student record.

The Department proposes to amend N.J.A.C. 6A:32-7.1(a), which states the subchapter applies to all district boards of education and private agencies that provide educational services by means of public funds. The Department proposes to add "charter schools, renaissance school projects, approved private schools for students with disabilities" after "district board of education" because the subchapter applies to them. The Department further proposes to add "[t]hroughout this subchapter unless otherwise indicated, 'district board of education' refers to the governing body of each of the five agencies" to clarify that term is inclusive of all entities referenced in the regulation, as proposed for amendment.

N.J.A.C. 6A:32-7.2 School contact directory for official use

This section requires a school district to compile and maintain a school contact directory for official use only that is separate and distinct from the student information directory.

The Department proposes to recodify the second and third sentence at existing N.J.A.C. 6A:32-7.2(a) as new N.J.A.C. 6A:32-7.2(b) to separate the regulations regarding the allowed use of the school contact directory for official use only from the requirement at N.J.A.C. 6A:32-7.2(a) for a school district to maintain it. The Department also proposes to recodify existing N.J.A.C. 6A:32-7.2(b) as new N.J.A.C. 6A:32-7.2(c).

N.J.A.C. 6A:32-7.3 Mandated student records

This section establishes the minimum information that must be part of a mandated student record for a currently enrolled student.

The Department proposes new N.J.A.C. 6A:32-7.3(a) that states "This section applies only to district boards of education and charter school and renaissance school project boards of trustees. Throughout this section unless otherwise indicated, 'district board of education' refers to the governing body of each of the three agencies." The proposed rule is necessary because

APSSDs and other private agencies are not responsible for maintaining mandated student records.

The Department proposes an amendment at recodified N.J.A.C. 6A:32-7.3(b)1, which requires the mandated student record to include the student's name, address, telephone number, date of birth, name of parent(s), gender, standardized assessment results, grades, attendance, classes attended, grade level completed, year completed, and years of attendance. The Department proposes to add "record of daily" before "attendance." The Department also proposes to delete existing N.J.A.C. 6A:32-7.3(a)2, which requires a "[r]ecord of daily attendance" to be included as part of the mandated student record, to reduce repetition. As a result, the Department further proposes to recodify existing N.J.A.C. 6A:32-7.3(a)3 through 6 as new N.J.A.C. 6A:32-7.3(b)2 through 5. The Department also proposes an amendment at recodified N.J.A.C. 6A:7.3(b)2, which requires a description of the student's progress according to the school district's student evaluation system. The Department proposes to replace "evaluation system used in the school district" with "performance data" to clarify that student progress is measured by using student performance data.

N.J.A.C. 6A:32-7.4 Maintenance and security of student records

This section sets forth the requirements for school districts' maintenance and security of student records.

The Department proposes amendments at N.J.A.C. 6A:32-7.4(c), which requires student health records, whether stored on paper or electronically, to 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. The Department proposes to replace "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" with "in accordance with N.J.A.C. 6A:32-7.1(l)." The proposed amendment will ensure consistency between the rules and eliminate redundancies.

N.J.A.C. 6A:32-7.5 Access to student records

This section sets forth the circumstances under which district boards of education and private agencies that provide educational services by means of public funds may provide access to student records to authorized organizations, agencies, or persons defined in this section.

The Department proposes to recodify existing N.J.A.C. 6A:32-7.5(b) and (c) as new N.J.A.C. 6A:32-7.5(c) and (b), respectively, for clarity.

Existing N.J.A.C. 6A:32-7.5(g) requires individuals to adhere to the requirements of the OPRA and FERPA when complying with the section. The Department proposes an amendment at N.J.A.C. 6A:32-7.5(g) to replace "individuals" with "district boards of education and charter school and renaissance school project boards of trustees" to clarify that the subsection applies to all three entities. The section does not apply to APSSDs.

The Department proposes new N.J.A.C. 6A:32-7.5(g)1 to set forth a procedure whereby district boards of education or charter school or renaissance school project board of trustees may produce student records under OPRA following the removal of personally identifiable information. Proposed new N.J.A.C. 6A:32-7.5(g)1 also stipulates the release can take place, provided that the district board of education or charter school or renaissance school project board of trustees has made a reasonable decision that a student's identity cannot be determined whether

through single or multiple releases (that is, responses to single or multiple requests for records), or when added to other reasonably available information. The proposed amendment will clarify that a district board of education or charter school or renaissance school project board of trustees may release student records when responding to a request from any party under the OPRA after the district board of education or charter school or renaissance school project board of trustees has redacted all personally identifiable information and made a reasonable determination that a student's identity is not personally identifiable. By way of further explanation, in the absence of any "information related to an individual student," the document(s) no longer meets the definition of "student record" at N.J.A.C. 6A:32-2.1 and, therefore, may be released to any party.

N.J.A.C. 6A:32-7.6 Conditions for access to student records

This section specifies the conditions under which authorized agencies, organizations, and individuals are permitted to access student records.

N.J.A.C. 6A:32-7.7 Rights of appeal for parents and adult students

This section describes the rights of a parent of a minor student and an adult student to appeal items in the student record for modification or removal.

Existing N.J.A.C. 6A:32-7.7(a) states that student records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information, or denial of access to organizations, agencies and persons. The Department proposes new N.J.A.C. 6A:32-7.7(a)4 to allow a parent or adult student to request "[i]mmediate access to student records for organizations, agencies, and persons denied access pending final determination of the challenged procedure as described in this subchapter." The proposed new regulation will clarify that student records are subject to challenge by parents and adult students if the district has denied access to the specified entities.

The Department proposes to recodify N.J.A.C. 6A:32-7.7(b), which sets forth how the parent or adult student must provide written notification to the school district to request a stay of disclosure pending final determination of the challenged procedure described in N.J.A.C. 6A:32-7.7(a). The Department proposes to recodify all but the first sentence as N.J.A.C. 6A:32-7.7(b)1 through 5 to delineate the steps for clarity.

The Department proposes amendments to the first sentence at N.J.A.C. 6A:32-7.7(d), which requires, regardless of the outcome of an appeal, a parent or adult student to be permitted to place in the student record a statement commenting upon the information in the student record or setting forth any reasons for disagreement with the decision made in the appeal. The Department proposes to replace "disagreement with the decision made in the appeal" with "contesting a portion of the student record, including the decision made in the appeal." A parent or adult student may not only disagree with the decision made in the appeal, but may also seek to have a permanent record of the contested information or documentation in the student record or the decision made in the appeal.

N.J.A.C. 6A:32-7.8 Retention and disposal of student records

This section provides guidance to school districts regarding how to appropriately retain and dispose of student records for currently enrolled students and students who are no longer enrolled in the school district.

The Department proposes new N.J.A.C. 6A:32-7.8(a) as follows: "This section applies only to district boards of education and charter school and renaissance school project boards of

trustees. Throughout this section unless otherwise indicated, ‘district board of education’ refers to the governing body of each of the three types of agencies.’” The proposed rule is necessary because APSSDs and other private agencies are not responsible for the retention and disposal of student records.

As a result, the Department proposes to recodify existing N.J.A.C. 6A:32-7.8(a) through (e) as new N.J.A.C. 6A:32-7.8(b) through (f).

The Department proposes amendments at N.J.A.C. 6A:32-7.8(f), which requires the New Jersey public school district of last enrollment, graduation, or permanent departure of the student from the school district to keep for 100 years a mandated record of a student’s name, date of birth, name of parents, gender, health history and immunization, standardized assessment results, grades, attendance, classes attended, grade level completed, year completed, and years of attendance. The Department proposes to delete “New Jersey public” before “school district.” The proposed amendment will align the rule with new N.J.A.C. 6A:32-7.8(a).

Subchapter 8. Student Attendance and Accounting

N.J.A.C. 6A:32-8.1 School register

The section sets forth the method by which district boards of education track student enrollment and attendance.

The Department proposes to amend N.J.A.C. 6A:32-8.1(a), which states the subchapter applies to all district boards of education and private agencies that provide educational services by means of public funds. The Department proposes to add “charter schools, renaissance school projects, approved private schools for students with disabilities” after “district board of education” because the subchapter applies to them. The Department further proposes to add “[t]hroughout this subchapter unless otherwise indicated, ‘district board of education’ refers to the governing body of each of the five types of agencies” to clarify that term is inclusive of all entities referenced in the regulation, as proposed for amendment.

The Department proposes an amendment at N.J.A.C. 6A:32-8.1(d), which requires student attendance to be recorded in the school register during school hours on each day school is in session. The Department proposes to replace “each day school is in session” with “each day in session, pursuant to N.J.A.C. 6A:32-8.3.” The proposed amendment will align N.J.A.C. 6A:32-8.1(d) with the qualifications for a school day to count as a “day in session,” which are located in new N.J.A.C. 6A:32-8.3.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(f), which requires a teacher or other authorized person to keep a record of attendance of all students on roll in a school register each day that school is in session and requires the attendance records to be kept according to these rules and the specific instructions issued by the Commissioner, as the second sentence in N.J.A.C. 6A:32-8.1(d). The provisions are better positioned in the regulation requiring attendance to be taken in the school register. The Department also proposes to replace “by a teacher or other authorized person” with “[a]n employee designated by the chief school administrator” since it is no longer a teacher’s responsibility to enter student attendance into the school register. The Department also proposes to replace “according to these rules and the specific instructions issued by the Commissioner” with “in accordance with this subchapter and the guidance at (c) above” to clarify the referenced regulations and instructions.

The Department proposes to delete N.J.A.C. 6A:32-8.1(e), which requires a school register to be kept by grade span (that is, preschool, kindergarten, grades one through five,

grades six through eight, grades nine through 12) and by program type (that is, each preschool class for the disabled, each class for the disabled, shared-time classes for regular students, shared-time classes for students with disabilities, full-time bilingual education programs and vocational day programs, and summer schools operated by district boards of education). This method of maintaining a school register is no longer how data are captured in the school register. Schools must maintain a separate register for each approved program of instruction that is offered. A list of all program types is included in the [NJ SMART SID Management Student Data Handbook](#).

The Department proposes to recodify existing N.J.A.C. 6A:32-8.1(f) as new N.J.A.C. 6A:32-8.1(e). The Department also proposes an amendment to the provision that requires students on home instruction to have his or her attendance recorded on the regular register for the program in which the student is enrolled. The Department proposes to replace “his or her” with “their” to eliminate the use of gender-specific pronouns. The regulation, in part, also requires the number of possible days of enrollment for a student on home instruction to be the same as for other students in the program in which the student is enrolled. The existing rule requires counting the possible days of enrollment for a student on home instruction and for other students in the same program, which can vary between students. The Department proposes to replace “days of enrollment” with “days in membership” to clarify that a student on home instruction is to be counted as having attended school in the same way that other students who were physically present at school were counted that day.

N.J.A.C. 6A:32-8.2 School enrollment

The section defines student enrollment in school procedures.

The Department proposes amendments to the first sentence at N.J.A.C. 6A:32-8.2(a), which requires the enrollment in a class, a school, or a school district to be the total number of original entries plus the number of re-entries, less the number of transfers, withdrawals, or dropouts in any such unit during a school year. The Department proposes to replace “class” with “program of instruction” to update this subsection to reflect current terms used in the school register. The same amendment is proposed to the second sentence at N.J.A.C. 6A:32-8.2(a). The Department also proposes to add “school” before “enrollment” and “student” before “entries,” respectively. The Department also proposes to add “in the school register” after “entries.” The proposed amendments will clarify that student data used to determine school enrollment must be entered into the school register.

The Department proposes amendments at N.J.A.C. 6A:32-8.2(b), which prohibits a student from being enrolled in more than one register in any school district during a school year and requires all students to be enrolled as of the first day of attendance for the year. The Department proposes to add “concurrently” before “enrolled” and “with the exception of shared-time students” at the end of the first sentence. The proposed amendments will clarify that a student may not be enrolled in more than one school register at the same time, unless the student is a shared-time student. The Department also proposes to delete “[a]ll students shall be enrolled as of the first day of attendance for the year” because the proposed definition for “days in membership” addresses the timing of a student’s enrollment and first possible day of attendance.

The Department proposes amendments at N.J.A.C. 6A:32-8.2(c), which prohibits a student from being enrolled in a school register until the student has reached the legal school ages listed for kindergarten, regional day school, and preschool for students with disabilities. The Department proposes to add “over the age of five years in accordance with N.J.S.A. 18A:38-1, Attendance at school free of charge ” after “the student has reached.” The Department also

proposes to add “[t]he school district may enroll students under” before “the following legal school ages.” The proposed amendments will clarify that students may be enrolled in a school register in accordance with the authorizing statute and enrolled in the school register at grade levels or ages not addressed at N.J.A.C. 6A:32-8.2(c). The Department also proposes amendments at N.J.A.C. 6A:32-8.2(c)1, which states “Kindergarten: more than four years and less than six years” to replace “more” with “older” and “less” with “younger,” respectively. The proposed amendments will clarify that kindergarten students may be entered into the school register if they are older than four years old but younger than six years old. The Department also proposes to delete existing N.J.A.C. 6A:32-8.2(c)2, which states “Regional day school: more than five years,” because the proposed amendment at N.J.A.C. 6A:32-8.2(c) accounts for this exception. The Department proposes new N.J.A.C. 6A:32-8.2(c)2 as follows: “State-funded preschool program: at least three years of age and younger than five years” because students in State-funded preschool programs were not previously accounted for in the exceptions for enrollment in the school register. The Department also proposes to amend N.J.A.C. 6A:32-8.2(c)3, which states “Preschool disabled: at least three years of age and less than five years.” The Department proposes to replace “disabled” with “students with disabilities.” The Department also proposes to amend the paragraph by replacing “more” with “older” and “less” with “younger,” respectively. The proposed amendment will clarify that a preschool student with disabilities must be older than three years and younger than five years old to be entered into the school register.

The Department proposes amendments at N.J.A.C. 6A:32-8.2(f), which, in part, requires a school district’s average daily enrollment to be the sum of the days present and absent of all enrolled students when schools were in session during the year, divided by the number of days schools were actually in session. The Department proposes to replace “days present and absent” with “the total days in membership.” The proposed amendment specifies that the school district’s daily enrollment is based on the number of days in membership of a student in the school district and not a student’s attendance. The Department also proposes to delete “schools were actually” to align with the term of “days in session” as defined in N.J.A.C. 6A:32-8.3.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.2(g) as new N.J.A.C. 6A:32-8.5. The proposed amendments are discussed in the summary of new N.J.A.C. 6A:32-8.5.

N.J.A.C. 6A:32-8.3 School attendance

The section defines attendance for recording purposes in the school register and contains rules regarding kindergarten.

The Department proposes to rename this section “Day in session” and to relocate regulations regarding student attendance at new N.J.A.C. 6A:32-8.4. The Department proposes to address “day in session” requirements separately from student attendance requirements. A “day in session” applies to a school as a whole and defines a school day for purposes of being considered one of the 180 required days of school, while “student attendance” applies to individual students.

The Department proposes amendments at N.J.A.C. 6A:32-8.3(a), which defines a day in session for purposes of school attendance, as well as what does not constitute a day in session, such as holidays, teachers’ institutes, or inclement weather. The Department proposes to delete “[f]or purposes of school attendance” and to replace “open” with “scheduled to provide instruction.” The Department further proposes to amend the subsection by adding “not under conditions set forth at N.J.A.C. 6A:32-13” after “inclement weather.” The proposed amendment reflects the new rules proposed at N.J.A.C. 6A:32-13, which allow a school district to consider a

remote or virtual instruction day as a day in session when the State or local health department determines that it is advisable to close or mandates closure of the schools of a school district due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days.

The Department proposes amendments at N.J.A.C. 6A:32-8.3(b), which requires a school day to consist of not less than four hours, except that one continuous session of two and one-half hours may be considered a full day in kindergarten. The Department proposes to replace “school day” with “day in session” for consistency. The Department also proposes to add “exclusive of recess and lunch periods” after “four hours” to relocate the provision at existing N.J.A.C. 6A:32-8.3(e) that excludes recess and lunch periods from the four hours required for a full school day. The Department also proposes to delete existing N.J.A.C. 6A:32-8.3(e).

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(c) as new N.J.A.C. 6A:32-12.1 with amendments. The regulation sets forth requirements specifically for approved kindergarten programs and classes, and not a day in session or student attendance; therefore, the regulation is better positioned as a separate section.

The Department proposes to delete N.J.A.C. 6A:32-8.3(d), which requires a day of attendance to be one in which a student is present for the full day under the guidance and direction of a teacher while school is in session and prohibits an excused absence for any reason from being counted as a day of attendance in the school register. Whenever over-crowded conditions make it necessary to hold two separate sessions with a different group of students in each session, the subsection requires a student attending for all of either session to be regarded as having attended for the full day. The proposed amendments to subsections (c) and (d) will align the rule with Federal guidance regarding the definition of an absence and new N.J.A.C. 6A:32-8.4(c) and (d) will establish the standards for recording a student as present and absent.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(f) as new N.J.A.C. 6A:32-8.4(b) with amendments discussed further below.

The Department proposes to delete N.J.A.C. 6A:32-8.3(g), which prohibits a student from being recorded as present unless the school is in session and the student is under the guidance and direction of a teacher in the teaching process. New N.J.A.C. 6A:32-8.4(c) will define when a student may be recorded as present.

The Department proposes to delete N.J.A.C. 6A:32-8.3(h), which requires a student to be recorded as absent in the school register when not in attendance at a session of the school while a member of the school, except students excused due to religious holidays must be recorded as excused. New N.J.A.C. 6A:32-8.4(d) will define when a student may be recorded as absent.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(i) and (j) as new N.J.A.C. 6A:32-8.4(a) and (e)1i, respectively.

The Department proposes to delete N.J.A.C. 6A:32-8.3(k), which prohibits the mere presence of a student at roll call from being regarded as sufficient attendance for compliance with attendance rules. The rule also requires a student in a school that is in session during both the forenoon and the afternoon to be present at least one hour during both the forenoon and the afternoon in order to be recorded as present for the full day. The rule further requires a student in a school that is in session during either the forenoon or the afternoon to be present at least two hours in the session in order to be recorded as present for the full day. The proposed amendments

will align the rule regarding the definition of an absence. New N.J.A.C. 6A:32-8.4(c) and (d) will establish standards for a day present and absent that comply with the Federal guidance.

N.J.A.C. 6A:32-8.4 Student attendance

The proposed section defines student attendance for recording purposes in the school register.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(i), which requires a student to be recorded as either present, absent, or excused for religious observance every day the school is in session after the student enters until the date the student is transferred to another school, transferred to an individual home instruction record, or officially leaves the school system, as new N.J.A.C. 6A:32-8.4(a). The Department proposes to add “[f]or all State attendance submissions” at the beginning to clarify that the rule applies to State submissions and not to district board of education attendance recordkeeping. The Department also proposes to replace “excused for religious observance” with “excused for a State-excused absence, pursuant to (e) below” to clearly indicate the types of student absences that are considered excused by the State. The Department further proposes to replace “enters” with “enrolls” for consistency with the chapter’s language. The Department proposes to delete “transferred to an individual home instruction record” because it contradicts N.J.A.C. 6A:32-8.1(e), which explains the proper way for a school district to record attendance for a student placed on home instruction.

The Department proposes new N.J.A.C. 6A:32-8.4(b) to require a record of attendance of all students to be kept in accordance with N.J.A.C. 6A:32-8.1(c). The proposed subsection also will require the employee designated by the chief school administrator to keep the attendance records according to this subchapter and the guidance issued by the Commissioner in accordance with N.J.A.C. 6A:32-8.1(c).

The Department proposes new N.J.A.C. 6A:32-8.4(c) to require a student enrolled in a school to be recorded in the school register as present if the student participates in instruction or instruction-related activities for at least half of a day in session whether the student is physically on school grounds, at an approved off-grounds location, or in a virtual or remote instruction setting, pursuant to N.J.A.C. 6A:32-13. The Department proposes new N.J.A.C. 6A:32-8.4(d) to require a school-enrolled student enrolled who is not participating in instruction or instruction-related activities pursuant to N.J.A.C. 6A:32-8.4(c) to be recorded in the school register as absent unless the student’s nonparticipation is due to as a State-excused absence, pursuant to N.J.A.C. 6A:32-8.4(e). The proposed rules will establish new standards for when a student is recorded as present or absent and will align the chapter with Federal guidance regarding the definition of an absence. According to the United States Department of Education guidance (*FSI95 – Chronic Absenteeism File Specifications* SY 2018-19), a student is absent if the student is not physically on school grounds and is not participating in instruction or instruction-related activities at an approved off-grounds location for at least half the school day.

The Department proposes new N.J.A.C. 6A:32-8.4(e)1 through 3 to list the types of State-excused absences that are established by State statutes: religious observances, participation in observance of Veterans Day, and participation in district board of election membership activities, pursuant to N.J.S.A. 18A:36-33. The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(j), which requires the Commissioner to annually prescribe a list of religious holidays on which it is mandatory to excuse students for religious observance upon the written request signed by the parent or person standing in loco parentis, as new N.J.A.C. 6A:32-8.4(e)1i. The Department proposes new N.J.A.C. 6A:32-8.4(e)4 through 6 to include the following as State-excused absences: Take Our Children to Work Day, college visit(s) up to three days per

school year for students in grades 11 and 12, and closure of a busing school district that prevents a student from having transportation to the receiving school. Proposed new N.J.A.C. 6A:32-8.4(e)4 through 6 are currently included in the New Jersey School Register as acceptable State-excused absences.

The Department proposes new N.J.A.C. 6A:32-8.4(f) to state that, for absences that do not meet the criteria at N.J.A.C. 6A:32-8.4(e), district boards of education may adopt policies that establish locally approved or excused absences consistent with N.J.A.C. 6A:16-7.6 for the purposes of expectations and consequences regarding truancy, student conduct, promotion, retention, and the award of course credit. The new subsection also states that an absence designated as excused by a district board of education's policy that is not a State-excused absence under N.J.A.C. 6A:32-8.4(e) must be recorded as an absence for the purpose of chronic absenteeism pursuant to N.J.A.C. 6A:32-8.6. The proposed subsection will clarify that a district board of education has discretion to designate as excused an absence due to medical or other reasons for the purposes of expectations and consequences regarding truancy, student conduct, promotion, retention, and the award of course credit. However, absences that are designated as excused by a district board of education in accordance with N.J.A.C. 6A:16-7.6 but do not meet the criteria at N.J.A.C. 6A:32-8.4(e) must be reported to the Department as unexcused absences. The proposed rule will eliminate confusion regarding the differences in reporting student attendance between school district and State purposes. The proposed rule also will contribute to more accurate and consistent reporting to the Department.

N.J.A.C. 6A:32-8.5 Average daily attendance

The proposed section defines average daily attendance, which is data that the Department collects from school districts and submits to the Federal government as part of the National Public Education Financial Survey.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.2(g) as new N.J.A.C. 6A:32-8.5. Existing N.J.A.C. 6A:32-8.2(g) requires a school district's average daily attendance to be calculated as the sum of the days present of all enrolled students when schools were in session during the school year divided by the number of days schools were actually in session. The existing regulation also requires average daily attendance for the classes or schools of a school district having varying lengths of terms to be the sum of the average daily attendance obtained for the individual classes or schools. The Department proposes to replace "sum" with "total number" and to replace "schools were actually in session" with "in membership." The Department further propose to replace "classes" in both instances with "program of instruction," which is the term used in the school register. The Department proposes to recodify the existing definition of "average daily attendance" as the second sentence. The Department proposes to replace "of attendance" with "in session" for consistency with the proposed definition of "days in session."

The proposed amendments will ensure consistency in reporting student attendance in the New Jersey School Register and New Jersey Standards Measurement and Resource for Teaching (NJ SMART). The proposed amendments also will clarify that a student's total number of days present is divided by the days the student is counted in membership when calculating average daily attendance rates of a school district, school, or program of instruction. The proposed amendments will further clarify that student average daily attendance is based on the number of days a school is in session. As will be discussed in the proposed new N.J.A.C. 6A:32-8.6(a)1 below, days in membership do not include days a student has a State-excused absence.

For illustration purposes, a school district with a total student population of 1,000 has 160,000 total number of days in membership; the calculation takes into account that some students are enrolled in the school district for the less than the State-minimum of 180 days of instruction each school year due to changes in residency or other factors. If the school district calculates that all enrolled students had a combined total of 10,000 days of unexcused absences, the school district's average daily attendance for the school year would be 93.75 percent. The school district would perform the same calculation to determine the average daily attendance for each school and each program of instruction (for example, a special education self-contained program). For further illustration, a student's average daily attendance for the school year would be 176 (the number of days the student was present) divided by 180 (the number of days a school is in session) equaling 97.78 percent. The proposed rule will also ensure that every New Jersey school district uses the correct formula when calculating a student's average daily attendance.

N.J.A.C. 6A:32-8.6 Absentee and chronic absenteeism rates

The proposed section sets forth how a student's absentee rate is determined and how to identify whether a student is chronically absent.

New N.J.A.C. 6A:32-8.6(a) explains how to calculate a student's absentee rate, which will be used in determining whether a student is chronically absent. Under the proposed rule, a student's absentee rate is the number of the student's days in membership minus the student's total number of days present and then divided by the student's days in membership. New N.J.A.C. 6A:32-8.6(a)1 states that State-excused absences shall not be included in a student's days in membership for purposes of calculating a student's absentee rate.

New N.J.A.C. 6A:32-8.6(b) specifies that a student is identified as chronically absent if the student's absentee rate is equal to or greater than 10 percent.

New N.J.A.C. 6A:32-8.6(c) will require each school with 10 percent or more of its enrolled students identified as chronically absent to develop a corrective action plan to improve absenteeism rates. The proposed rule also states that, in accordance with N.J.S.A. 18A:38-25.1, the school will annually review and revise the corrective action plan, and present the revisions to the district board of education, until the percentage of students who are chronically absent is less than 10 percent.

The proposed section will implement the requirements of N.J.S.A. 18A:38-25.1 (P.L. 2018, c. 23). The proposed rules also will align the chapter with New Jersey's ESSA State Plan and the New Jersey Qualitative Single Accountability Continuum (NJQSAC) indicators, which utilize chronic absenteeism as a measure of school quality and student success for accountability.

Subchapter 9. Athletics Procedures

N.J.A.C. 6A:32-9.1 General requirements

This section describes requirements for establishing school district procedures for the management of athletic programs.

The Department proposes to amend N.J.A.C. 6A:32-9.1(d), which requires a student representing the school in interscholastic athletic competition to sign a district board of education form that requests that the student be enrolled as a candidate for a place on school team in a specified sport. The existing subsection also requires the parent or adult student to execute an acknowledgment of the physical hazards that may be encountered. The Department proposes to replace "student representing his or her school" with "student seeking to represent the school"

because a student already on an athletics team would not request to be a candidate for a place on the team. The Department proposes to add “and their parent, or an adult student,” before “shall sign a form” as a parent or adult student would be required to sign the full form and not only the acknowledgement about physical hazards. The Department proposes to recodify as N.J.A.C. 6A:32-9.1(d)1 the requirement for the form to contain a request for the student to be a candidate for placement on a team. The Department proposes to recodify as N.J.A.C. 6A:32-9.1(d)2 the requirement for the form to contain an acknowledgement that physical hazards may be encountered. The Department proposes new N.J.A.C. 6A:32-9.1(d)3 to require the form to include consent of the student’s parent or the adult student to participate. The requirement is contained at existing N.J.A.C. 6A:32-9.1(e), which is proposed for deletion.

Subchapter 10. Summer School Sessions

N.J.A.C. 6A:32-10.1 General

This section provides general requirements for the operation of summer school sessions.

N.J.A.C. 6A:32-10.2 Costs and tuition

The rules establish permissible tuition fees for summer school sessions for both resident and nonresident students.

N.J.A.C. 6A:32-10.3 Staffing

This section sets forth staffing requirements for summer school sessions.

N.J.A.C. 6A:32-10.4 Student assignment and credit

The rules provide for the assignment of credit after completion of a summer school session.

Subchapter 11. Withdrawal from Regional School Districts

N.J.A.C. 6A:32-11.1 Application and data for investigation of advisability of withdrawal or dissolution

This section describes the process for a school district’s withdrawal from a regional school district and for the dissolution of a limited-purpose regional school district. The rules also include the required components of the school district’s application to the executive county superintendent for withdrawal or dissolution.

The Department proposes to recodify all but the first sentence of existing N.J.A.C. 6A:32-11.1(a) as new N.J.A.C. 6A:32-11.1(b) through (d). The Department also proposes to recodify existing N.J.A.C. 6A:32-11.1(b) as new N.J.A.C. 6A:32-11.1(e). Restructuring this section will clearly delineate the different components of the limited-purpose regional school district resolution requesting that the executive county superintendent investigate the advisability of a withdrawal.

N.J.A.C. 6A:32-11.2 Investigation and report by executive county superintendent

This section sets forth the requirements for the executive county superintendent’s investigation and report of the resolution for withdrawal or dissolution from a regional school district.

The Department proposes an amendment at N.J.A.C. 6A:32-11.2(a)9, which, in part, states that the Office of School Facilities calculates the school building replacement costs. The Department proposes to replace “Office of School Facilities” with “the Department” to clarify that this is the Department’s responsibility regardless of the name of the office.

The Department proposes new N.J.A.C. 6A:32-11.2(b) to state “[t]he executive county superintendent report shall include, but not be limited to, the following.” The Department also proposes to recodify existing N.J.A.C. 6A:32-11.2(a)12, 13, and 14, which establish elements of the executive county superintendent’s report on the advisability of withdrawal or dissolution of a regional school district, as new N.J.A.C. 6A:32-11.2(b)1, 2, and 3. The proposed recodification will clarify that the items are required elements of the executive county superintendent’s report and not part of the data informing the report.

The Department also proposes to recodify existing N.J.A.C. 6A:32-11.2(b) as new N.J.A.C. 6A:32-11.2(c).

N.J.A.C. 6A:32-11.3 Special school election

This section sets forth the procedures for a special school election for the withdrawal from a regional school district after the executive county superintendent grants an application.

N.J.A.C. 6A:32-11.4 Final determination of board of review

The rules state that the final determination for withdrawal from a regional school district is decided by a board of review.

N.J.A.C. 6A:32-11.5 Effective date of withdrawal

This section states that, if approved at the special school election, the withdrawal of the school district or municipality shall become effective upon a date to be determined by the Commissioner.

Subchapter 12. Student Behavior

N.J.A.C. 6A:32-12.1 Student attendance

The section requires the average daily attendance rate for each school district to average 90 percent or higher as calculated for the three years prior to the school year in which the school district is monitored. The rules also require each school district with a three-year average below 90 percent to develop a district improvement plan to improve student attendance.

The Department proposes to delete this subchapter because the Department amended the NJQSAC indicators in the appendices of N.J.A.C. 6A:30 to align with New Jersey’s ESSA State Plan, which established chronic absenteeism as a measure of school quality and student success for accountability. Therefore, the NJQSAC indicators no longer monitor a school district’s average daily attendance rates and, instead, monitor chronic absenteeism. Furthermore, new N.J.A.C. 6A:32-8.5 defines average daily attendance.

Subchapter 12. Kindergarten

N.J.A.C. 6A:32-12.1 Kindergarten programs

The proposed section sets forth the educator certification and programmatic requirements for approved kindergarten programs, as well as maximum enrollment for kindergarten classes.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(c) as new N.J.A.C. 6A:32-12.1, Kindergarten programs, with amendments.

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(c)2, which requires an approved kindergarten to provide each child with a balanced program in an approved facility with adequate equipment, materials and supplies, as new N.J.A.C. 6A:32-12.1(a). The existing rule also requires the program is to be designed to meet the individual needs of every child and allows for instruction in reading and other subjects when it has been determined that a child is ready for such instruction by the teacher of the class. The Department proposes to replace “child” with “student” and to specify the requirement to offer a balanced program and the design are the responsibility of school districts offering approved kindergarten programs. The Department also proposes to delete “in an approved facility” because kindergarten facilities are approved the same as other school district facilities and do not undergo a separate process. The Department further proposes to add “a balanced” before “kindergarten program” to clarify what is meant by “balanced program.”

The Department proposes to recodify existing N.J.A.C. 6A:32-8.3(c)1, which requires each kindergarten teacher to be properly certified, as new N.J.A.C. 6A:32-12.1(b).

The Department proposes to recodify the provision in existing N.J.A.C. 6A:32-8.3(c)3 that limits the maximum enrollment for a kindergarten class to 25 students per teacher and 21 students in former Abbott school districts, as new N.J.A.C. 6A:32-12.1(c). The Department proposes to clarify the limit of 25 students in a kindergarten class applies to school districts that are not subject to the cited Abbott v. Burke decisions or the provisions of N.J.A.C. 6A:13-3.2. The Department also proposes to clarify that former Abbott school districts and school districts in which 40 percent or more of the students are “at-risk” as defined in P.L. 2007, c. 260 must follow the provisions for kindergarten at N.J.A.C. 6A:13-3.2, which includes a class-size limit of 21 students in kindergarten. The Department further proposes to recodify the provision in existing N.J.A.C. 6A:32-8.3(c)3 that allows the executive county superintendent to give permission to increase the number of students in a non-Abbott classroom provided another teacher, an auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size, as new N.J.A.C. 6A:32-12.1(c)1. The Department proposes amendments to specify that school districts not subject to the Abbott v. Burke decisions or the provisions of N.J.A.C. 6A:13-3.2 can submit a written request to the executive county superintendent for permission to increase the kindergarten class size.

Subchapter 13. Virtual or Remote Instruction

N.J.A.C. 6A:32-13.1 Virtual or remote instruction

The Department is proposing a new N.J.A.C. 6A:32-13 to address P.L. 2020, c. 27, which was enacted in response to the COVID-19 pandemic. The law requires the Department to establish rules that allow a district board of education to utilize a Department-approved program for virtual or remote instruction during a school closure lasting more than three consecutive school days due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure.

The proposed section sets forth how district boards of education, charter schools, renaissance school projects, and private agencies that provide educational services by means of public funds may fulfill the 180-day requirement established at N.J.S.A. 18A:7F-9.b through the provision of a Department-approved program for virtual or remote instruction.

Proposed N.J.A.C. 6A:32-13.1(a) states that the section applies to all district boards of education, charter schools, renaissance schools projects, and private agencies that provide educational services by means of public funds. The proposed regulation also states that, throughout the section unless otherwise indicated, “district board of education” refers to the governing body of each of the four types of agencies.

Proposed N.J.A.C. 6A:32-13.1(b) provides the chief school administrator with the authority to implement the school district’s program of virtual or remote instruction, pursuant to N.J.S.A. 18A:7F-9, if the State or local health department determines that it is advisable to close, or mandates closure of, the schools of a school district due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days. Proposed N.J.A.C. 6A:32-13.1(b)1 requires the school district’s virtual or remote instruction, if implemented by the chief school administrator, to be provided to an enrolled student, whether a general education student in preschool through grade 12 or a student with a disability aged three to 21. Proposed N.J.A.C. 6A:32-13.1(b)1i requires the school district to provide students with a disability with the same educational opportunities provided to general education students to the extent appropriate and practicable. Proposed N.J.A.C. 6A:32-13.1(b)1i allows the school district to deliver related services to general education students and students with a disability through electronic communication or a virtual or online platform, as appropriate.

Proposed N.J.A.C. 6A:32-13.1(c) allows a district board of education to apply one or more days of virtual or remote instruction to the 180-day requirement established pursuant to N.J.S.A. 18A:7F-9.b, under the following conditions:

- Virtual or remote instruction is provided to students on the day(s) that some or all of the programs of instruction of the school district were closed to in-person instruction;
- The virtual or remote instruction meets the Commissioner-established criteria for the occurrence of one of the events at N.J.A.C. 6A:32-13.1(b); and
- The district board of education submitted a proposed program of virtual or remote instruction to the Commissioner within 30 days of the effective date of P.L. 2020, c. 27 and, thereafter, by July 31 annually.

Proposed N.J.A.C. 6A:32-13.1(c)3i allows the Commissioner to retroactively approve the program if the district board of education is unable to complete and submit a proposed program by July 31 annually, and the school district is required to close its schools for a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure.

Proposed N.J.A.C. 6A:32-13.1(d) requires student attendance to be accounted for in accordance with N.J.A.C. 6A:32-8.4 for purposes of meeting State and local graduation requirements, the awarding of course credit, and other matters as determined by the Commissioner if the instruction is provided under the district board of education’s Commissioner-approved program.

N.J.A.C. 6A:32-13.2 Virtual or remote instruction in approved private schools for students with disabilities (APSSDs)

The proposed section describes how an APSSD may fulfill the 180-day requirement established at N.J.S.A. 18A:7F-9.b through the provision of a Department-approved program for virtual or remote instruction.

Proposed N.J.A.C. 6A:32-13.2(a) allows the APSSD's full-time non-teaching principal to implement the APSSD's program of virtual or remote instruction if the State or local health department determines that it is advisable to close, or mandates closure of, an APSSD due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days.

Proposed N.J.A.C. 6A:32-13.2(b) allows the APSSD to classify one or more days of virtual or remote instruction as a day of instruction for the purposes of calculating tuition pursuant to N.J.S.A. 18A:46-21.1.a under the following conditions:

- Virtual or remote instruction is provided to students on the day(s) that some or all of the programs of instruction of the APSSD was closed to in-person instruction;
- The virtual or remote instruction meets the Commissioner-established criteria for the occurrence of one of the events at (a) above; and
- The APSSD submitted a proposed program of virtual or remote instruction to the Commissioner and the sending district board(s) of education within 30 days of the effective date of P.L. 2020, c.27 and, thereafter, by July 31 annually.

Proposed N.J.A.C. 6A:32-13.2(b)3i allows the Commissioner to retroactively approve the program if the APSSD is unable to complete and submit a proposed program by July 31 annually, and the APSSD is required to close for a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure.

Proposed N.J.A.C. 6A:32-13.2(c) establishes that student attendance is accounted for in accordance with N.J.A.C. 6A:32-8.4 for purposes of meeting graduation requirements, the awarding of course credit, and other matters as determined by the Commissioner if provided under a Commissioner-approved program.

Proposed N.J.A.C. 6A:32-13.2(d) requires the APSSD's virtual or remote instruction to be consistent with the student's individualized education program to the extent appropriate and practicable. The proposed subsection also requires the APSSD's virtual or remote instruction to meet the New Jersey Student Learning Standards.

Subchapter 14. Voter Registration

N.J.A.C. 6A:32-14.1 Distribution

The section requires district boards of education, appropriate school official(s) in nonpublic schools with high schools, and private agencies that provide educational services for high schools by means of public funds to provide to each eligible high school student a voter registration form, a summary of voter registration eligibility requirements, and materials describing the role of a citizen and the importance of voting, pursuant to N.J.S.A. 18A:36-27. The regulation also requires the voter registration materials to be provided prior to the school year's graduation date.

N.J.A.C. 6A:32-14.2 Statement of assurance

The section requires the chief school administrator of a school district, the administrator of a nonpublic school with high schools, or the head administrator of a private agency that provides educational services for high schools by means of public funds to submit to the executive county superintendent a signed annual statement of assurance affirming the distribution of voter registration forms, a summary of voter registration eligibility requirements, and materials describing the role of a citizen and the importance of voting. The regulation also requires the statement of assurance to be submitted no later than June 30 each year.

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

Social Impact

The Department anticipates the rules proposed for readoption with amendments and new rules will have a positive social impact. The chapter provides school districts, charter schools, renaissance school projects, and private agencies that provide educational services by means of public funds with requirements regarding the daily operation of public schools. The proposed amendments and new rules will align the State's rules on student records with Federal law and regulations regarding public agencies' disclosure of student records. The proposed definition of "personally identifiable information" will further protect student privacy while ensuring the public continues to have access to government records. The proposed amendments and new rules are consistent with the Department's past practices regarding student records. The proposed amendments and new rules will have a positive social impact by ensuring consistency in reporting of student attendance and chronic absenteeism rates, both of which can be used as catalysts to improve school climate and culture and student attendance. The proposed amendments and new rules will further have a positive social impact by ensuring the safety of staff and students during a school closure for more than three consecutive school days due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure by allowing for virtual or remote instruction to count toward the requirement that school districts provide 180 days of instruction each school year.

The remainder of the rules proposed for readoption with amendments and new rules apply to district boards of education, charter school and renaissance school project boards of trustees, and private agencies that provide educational services by means of public funds for the determination of staff seniority, conduct of candidates for employment and employee physical examinations, recording of student attendance, athletic program procedures, conduct of summer school, and withdrawal from a regional school district. The rules proposed for readoption with amendments and new rules impacts district board of education members, school district administrators and staff, and parents in all school districts, and private agencies that provide educational services by means of public funds. The rules proposed for readoption with amendments and new rules benefit school districts and district boards of education by providing clear direction regarding the areas covered in the chapter. The rules proposed for readoption with amendments and new rules are beneficial to parents and the community by providing general requirements that govern district boards of education, charter school and renaissance school project boards of trustees, and private agencies that provide educational services by means of public funds.

Economic Impact

The economic impact of the rules proposed for readoption with amendments and new rules on school districts, charter schools, renaissance school projects, and private agencies that provide educational services by means of public funds varies based upon their size. School districts and private agencies that provide educational services by means of public funds with fewer schools, teaching staff, and students will incur costs relative to their populations. Larger school districts and private agencies that provide educational services by means of public funds will experience costs proportionate to their increased size. Costs will include those related to district board of education meetings, required reports, medical examinations for staff, and maintenance of student records. Proposed amendments to the requirements for physical examinations of candidates for employment and physical and psychiatric examinations of current employees will incorporate existing statutory language for clarification purposes; therefore, the proposed amendments will not increase the cost of the examinations for district boards of education or candidates for employment and current employees. If a school district seeks to withdraw from a limited-purpose regional school district, it will incur related costs such as a feasibility study and special election. The student attendance criteria and chronic absenteeism rate calculation will have a negligible monetary effect on school districts, unless the minimum standards are not met. School districts and schools that do not reach the standards will develop a plan for increased student attendance or alternative education programs for students at risk of dropping out of school. However, many school districts already have such programs in place and each county has an alternative education program available to school districts. Further, the proposed amendments require that students have access to digital devices to adequately implement a Commissioner-approved program for virtual or remote instructions pursuant to N.J.A.C. 6A:32-13. School districts have access to funding through the digital divide grant to pay for this equipment.

Federal Standards Statement

The rules proposed for readoption with amendments and new rules are consistent with Federal law and regulations, including FERPA and 34 C.F.R. Part 99. The rules proposed for readoption with amendments and new rules are in compliance with, and do not exceed, Federal education requirements included in ESSA and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq.

Jobs Impact Statement

The Department anticipates that the rules proposed for readoption with amendments and new rules will have no impact on the generation or loss of jobs in the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments and new rules will have no impact upon the agriculture industry in the State.

Regulatory Flexibility Analysis

The rules proposed for readoption with amendments and new rules will not change the existing reporting, recordkeeping, or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments will codify the existing practice for APSSDs and private agencies with regard to student records. APSSDs and private agencies must compile, maintain, and regulate access, disclosure, or communication of information within a currently enrolled student record in accordance with

N.J.A.C. 6A:32-7.1, 7.2, 7.4, and 7.5(a) through (f). APSSDs cannot be exempt from the rules because they are responsible for providing all education and support on behalf of the student's resident school district. APSSDs are the temporary holder of the student record until the time of graduation or exit from the school, when the APSSD returns the student record to the resident school district. The rules proposed for readoption with amendments and new rules now explicitly state which sections apply to APSSDs.

Housing Affordability Impact Analysis

There is an extreme unlikelihood that the rules proposed for readoption with amendments and new rules will have any impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the rules proposed for readoption with amendments and new rules would evoke a change in the average costs associated with housing because the rules apply only to the operation of school districts, charter schools, renaissance school projects, APSSDs, and private agencies that provide educational services by means of public funds.

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and new rules will have an insignificant to no impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules apply only to the operation of school districts, charter schools, renaissance school projects, APSSDs, and private agencies that provide educational services by means of public funds.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood that the rules proposed for readoption with amendments and new rules would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules apply only to the operation of school districts, charter schools, renaissance school projects, APSSDs, and private agencies that provide educational services by means of public funds.

Full text of the chapter's rules and the proposed amendments and new rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Chapter 32. School District Operations

Subchapter 1. Scope and Purpose

6A:32-1.1 Scope and purpose

The rules in this chapter are intended to provide assistance to district boards of education and school district administrators regarding the daily operation of schools and school districts.

Subchapter 2. Definitions

6A:32-2.1 Definitions

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

“Access” means the right to view, make notes, and/or reproduce a student record.

“Adult student” means a person who is at least 18 years of age[, or is attending an institution of postsecondary education,] or is an emancipated minor.

“Advanced course” means any course or subject not previously taken in an approved school district program for which additional credits or advanced placement may be awarded upon successful completion of the course.

[“Average daily attendance” means the total number of days that a student is present in school divided by the total possible number of days of attendance.]

“Board of school estimate” means a group of individuals who are appointed in accordance with N.J.S.A. 18A:22-1 and 2 and are responsible for annually preparing a budget for Type I school districts pursuant to N.J.S.A. 18A:22-7.

“Chief school administrator” means the superintendent of schools or the administrative principal if there is no superintendent. **In Subchapters 7, 8, and 13, “chief school administrator” includes charter school and renaissance school project lead persons.**

“Days in membership” means the number of school days in session in which a student is enrolled. A student’s membership begins on the first possible day of attendance following enrollment during the school year, notwithstanding the actual day the student was recorded as present for the first time.

“Elementary” means kindergarten, grades one through six, and grades seven and eight without departmental instruction.

“Endorsement” means as defined in N.J.A.C. 6A:9-2.1.

“Enrichment course” means any course or subject of a vocational nature for which no credits are awarded.

“Executive county superintendent” means a **person appointed to serve as executive** county superintendent of schools pursuant to N.J.S.A. 18A:7-1 et seq.

“Health history” means the record of a person’s past health events obtained in writing, completed by the individual or [his or her] **the individual’s** physician.

“Health screening” means the use of one or more diagnostic tools to test a person for the presence or precursors of a particular disease.

“Mandated student records” means student records that school districts compile pursuant to State statute, regulation, or authorized administrative directive.

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

“Parent” means the natural or adoptive parent, legal guardian, surrogate parent appointed according to N.J.A.C. 6A:14-2.2, 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. In addition, a [foster] **resource family** 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.

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

“Personally identifiable information” means, but is not limited to:

- 1. The student’s name;**
- 2. The name of the student’s parent(s) or other family members;**
- 3. The address of the student or the student’s family;**

4. **The email address of the student, the student’s parent(s), or other family members;**
5. **The telephone number of the student, the student’s parent(s), or other family members;**
6. **A personal identifier, such as the student’s Social Security number, student number, or biometric record;**
7. **A photo of the student;**
8. **The location and times of class trips;**
9. **Other indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name;**
10. **Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community who does not have personal knowledge of the relevant circumstances to identify the student with reasonable certainty; or**
11. **Information requested by a person who the district board of education, or private agency that provides educational services by means of public funds, reasonably believes knows the identity of the student to whom the student record relates.**

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

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

“Remote instruction” means the provision of instruction occurring when the student and the instructor are in different locations due to the closure of the facility(ies) of the district board of education, charter school, renaissance school project, or approved private school for students with disabilities. The closure of the facility(ies) shall be pursuant to N.J.S.A. 18A:7F-9 or 18A:46-21.1 and for more than three consecutive school days due to a declared state of emergency, a declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure.

“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. The directory may be provided for official use only to judicial, law enforcement, and medical personnel.

“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 executive county superintendent] that verifies compliance with regulatory requirements **and is submitted to the executive county superintendent by the chief school administrator.**

“Student discipline record” means information [maintained in a student’s record of] **regarding all disciplinary actions taken against a student by a school district pursuant to N.J.S.A. 18A:36-25.1.b and that is maintained in a student’s record.**

“Student information directory” means a publication of a district board of education that includes the following information relating to a student. It shall be used only by authorized school district personnel and for designated official use by judicial, law enforcement, and medical personnel and not for general public consumption.

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 certified school personnel solely as a memory aid and not for the use of a second party is excluded from this definition. **In the absence of any “information related to an individual student,” the document(s) no longer meets the definition of “student record.”**

“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” [holds the same meaning] **means** as [the term is] defined in N.J.S.A. 18A:1-1 [and N.J.A.C. 6A:9, Professional Standards].

“Virtual instruction” means the provision of active instruction when the student and the instructor are in different locations and instruction is facilitated through the internet and computer technologies due the closure of the facility(ies) of the district board of education, charter school, renaissance school project, or approved private school for students with disabilities. The closure of the facility(ies) shall be pursuant to N.J.S.A. 18A:7F-9 or 18A:46-21.1 and for more than three consecutive school days due to a declared state of emergency, a declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure.

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;
 2. Requested by the chief school administrator when the district board of education fails to meet within two months during the period in which the schools in the district are in session; or

3. 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 the special meeting shall be made pursuant to law and regulation, including N.J.S.A. 18A:10-6. Additionally, 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 **or renaissance school project** board of trustees members

- (a) Each district board of education and charter school **or renaissance school project** board of trustees shall:
1. Discuss annually 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;
 2. Adopt policies and procedures regarding the training of district board of education and charter school **or renaissance school project** board of trustees members in understanding the Code of Ethics; and
 3. [Provide] **Maintain** documentation, pursuant to (b) below, that each member of the district board of education or charter school **or renaissance school project** board of trustees has received and reviewed the Code of Ethics.
- (b) Each member of the district board of education or charter school **or renaissance school project** board of trustees shall sign an acknowledgement of receipt of the Code of Ethics for School Board Members contained within N.J.S.A. 18A:12-21 et seq. The acknowledgement of receipt requires each district board of education member and charter

school **or renaissance school project** 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 as a Type I school district, pursuant to 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] **the** meeting shall proceed to elect a presiding officer pro tem.

Subchapter 4. Employment of Teaching Staff

6A:32-4.1 Employment of teaching staff

- (a) Each district board of education or private [agencies] **agency** that provides educational services by means of public funds shall determine guidelines for the hiring of all staff.
- (b) [No] **Pursuant to N.J.S.A. 18A:26-2, no** teaching staff member shall be employed by any district board of education or private [agencies] **agency** that provides educational services by means of public funds unless [he or she is the holder of] **the teaching staff member holds** a valid certificate [(see N.J.S.A. 18A:26-2)].
- (c) Pursuant to N.J.A.C. 6A:9[, 6A:9A,] **and** 6A:9B[, and 6A:9C,] the district board of education shall [provide] **employ** certified personnel [needed] to implement a thorough and efficient system of free public schools.
- (d) Each school shall be assigned the services of a full-time non-teaching principal to be responsible for administration and supervision of the school.

1. When a full-time non-teaching principal is not assigned to a school, the district board of education, upon advice of the chief school administrator, shall submit to the Commissioner for approval a plan that ensures adequate supervision of students and staff.

6A:32-4.2 Approval of paraprofessional staff

[Statements] **The district board of education shall submit a statement of assurance (SOA)** affirming that all paraprofessional staff hired were employed as instructional or health and safety personnel or in accordance with the requirements of individualized education programs. **The district board of education** shall [be submitted biannually] **submit the SOA** to the executive county superintendent no later than September 30 and January 31 **each school year**.

6A:32-4.3 Access to personnel records

A district board of education or private [agencies] **agency** that provides educational services by means of public funds shall make employee records and information available for public access[,] pursuant to [N.J.S.A. 47:1A-10,] the Open Public Records Act, [but] **N.J.S.A. 47:1A-1 et seq., and** in accordance with N.J.S.A. 18A:6-120.d and 121.d.

6A:32-4.4 through 4.9 (Reserved)

Subchapter 5. Seniority

6A:32-5.1 Standards for determining seniority

- (a) [The word “employment” for] **For** purposes of this subchapter, **“employment”** shall be inclusive of “office” and “position.”

- (b) Seniority, pursuant to N.J.S.A. 18A:28-13 et seq., shall be determined according to the number or fraction of academic or calendar years of employment in the school district in specific categories [as hereinafter provided] **at (I) below**. [The] **Credit toward seniority shall include** 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 granted for study or research. [except for leaves] **Any leave** of absence or suspension resulting from confirmed discipline[, shall be credited toward seniority. All] **and 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 to time of service in or with the military or naval forces of the United States or this State, pursuant to 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 employee who holds** an emergency **or provisional** certificate shall not be entitled to seniority rights, but the years of employment under the emergency **or provisional** certificate shall count toward seniority when [he or she] **the employee** becomes the holder of a standard certificate[. Upon acquisition of a standard certificate, any period of service under a provisional certificate] as defined in N.J.A.C. 6A:9, Professional Standards [shall also be counted toward seniority].
- (f) Whenever a person holds employment simultaneously under two or more endorsements, or in two or more categories **at (I) below**, seniority shall be counted in all endorsements and categories in which [he or she] **the person** is or has been employed.

- (g) [Where] **If** the employment title is not properly descriptive of the duties performed, the [holder] **person who holds employment** shall be placed in a category in accordance with the duties performed and not by title. [Whenever] **If** the employment title is not found [in this chapter] **at (I) below** or N.J.A.C. 6A:9B, State Board of Examiners and Certification, the [holder of the] **person who holds** employment shall be classified as nearly to the duties performed as possible, pursuant to N.J.A.C. 6A:9B.
- (h) Whenever a person moves from, or reverts to, a category **at (I) below**, all periods of employment shall be credited toward [his or her] **the person's** seniority in any or all categories in which [he or she] **the person** previously held employment.
- (i) Whenever an employment category is abolished, [the] **a** tenured employee shall be given employment in the same category to which [he or she] **the employee** is entitled by seniority. If [he or she] **the tenured employee** has insufficient seniority for employment in the same category, then [he or she] **the employee** shall revert to the category in which [he or she held] employment **was held** prior to [his or her] employment in the same category. The person shall be placed and remain upon the preferred eligible list until a vacancy occurs in the category to which **the person is entitled** seniority [entitles him or her].
- (j) If a person has insufficient seniority in the category to which [he or she] **they** reverted, [he or she] **the person** shall revert to the next category in which [he or she held] employment **was held** immediately prior to [his or her] employment in the category to which [he or she] **they** reverted. [He or she] **The person** shall be placed and remain upon the preferred eligible list of the next preceding category, and so forth, until [he or she has] **the person has** been employed or placed upon all the preferred eligible lists of the

categories in which [he or she] **the person** formerly held employment in the school district.

- (k) In the event of a person's employment in some category to which [he or she] **they** reverted, [he or she] **the person** shall remain upon all the preferred eligible lists of the categories from which [he or she] **they** reverted. [He or she] **The person** shall be entitled to employment in any one or more such categories whenever a vacancy occurs to which seniority entitles [him or her] **them**.
- (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 superintendent position shall be a separate category; and
 - ii. District boards of education shall adopt, for each assistant superintendent position, a job description that shall set forth qualifications and endorsements for [such] **the position**;
 - 3. Director;
 - i. Each director position shall be a separate category; and
 - ii. District boards of education shall adopt, for each director position, a job description that sets forth the qualifications and endorsements for [such] **the position**;
 - 4. High school principal;
 - 5. Adult high school principal;
 - 6. Alternative school principal;

7. Vocational school principal;
8. Junior high or middle school principal;
9. Elementary **school** principal;
10. Supervisor;
 - i. Each supervisory title shall be a separate category; and
 - ii. District boards of education shall adopt, for each supervisory position, a job description that sets forth the qualifications and specific endorsements required for [such] **the** 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 or middle 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 endorsements shall have seniority within the secondary category only in [such] **the** endorsement(s) under which [he or she] **the person** has actually served;
 - ii. Whenever a person shall be reassigned from one subject area to another, all periods of employment in [his or her] **the person's** new assignment shall be credited toward [his or her] seniority in all endorsements in which [he or she previously held] employment **was previously held**;

- iii. Any person employed at the secondary level in a position requiring an educational services certificate or an instructional endorsement shall acquire seniority only in the secondary category and only for the period of actual service under [such] **the** educational services certificate or instructional endorsement; and
 - iv. Persons employed and providing services on a districtwide basis under an instructional endorsement or an educational services certificate shall acquire seniority on a districtwide basis;
18. Elementary:
- i. [District boards of education that make a determination to] **To** reorganize instruction at grades seven and eight pursuant to this subchapter, **district boards of education** shall [do so by adoption of] **adopt** a formal resolution setting forth the reasons for [such] **the** reorganization;
 - ii. Any person employed at the elementary level in a position requiring an educational services certificate or an instructional endorsement shall acquire seniority only in the elementary category and only for the period of actual service under [such] **the** educational services certificate or instructional endorsement;
 - iii. [Persons] **Any person** employed and providing services on a districtwide basis under an instructional endorsement or an educational services certificate shall acquire seniority on a districtwide basis;
 - iv. [Persons] **Any person** serving under **an** elementary endorsement[s] 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] **the person** shall accrue seniority in the secondary category but limited to the school district's departmentally organized grades seven and eight and the specific subject area [actually] taught in [such] **the** 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 N.J.A.C. 6A:9B.
- (m) [In the event of] **If** a restructure of grade levels [that] results in the elimination of all junior high or middle schools in the school district and the creation of schools with a grade-level organization that includes grades seven and eight, the seniority rights of the junior high or middle school principals, vice principals, and assistant principals displaced by [such] **the** restructuring shall be transferable to the newly reorganized schools in the category as defined by (l)9 above.

Subchapter 6. School Employee Physical **or Psychiatric** Examinations

6A:32-6.1 Scope and purpose

- (a) This subchapter designates the minimum assessments to be used by district boards of education in establishing physical examinations for candidates for employment and **physical or psychiatric examinations of** school district employees.
- (b) This subchapter applies to all district boards of education and private agencies that provide educational services by means of public funds.

6A:32-6.2 Policies and procedures for [employee] physical **or psychiatric** examinations

- (a) Pursuant to N.J.S.A. 18A:16-2, district boards of education shall adopt written policies and procedures for the physical examination of candidates for employment [and, where]. **The written policies shall provide for notification to candidates for employment regarding the requirements for physical examinations. The written policies also shall establish procedures to assure confidentiality during the collection, transmission, and storage of medical records of candidates for employment.**
- (b) Pursuant to N.J.S.A. 18A:16-2.a, the [school] district [so chooses, for the] **board of education may require physical or psychiatric** examinations of **school** employees. The **written** policies shall provide for notification to school employees [and candidates] regarding the requirements for physical **or psychiatric** examinations[, and]. **The written policies also shall** establish procedures to assure confidentiality during the collection, transmission, and storage of employee [and candidate] medical records.

6A:32-6.3 Requirements of physical **or psychiatric** examinations

- (a) Pursuant to N.J.S.A. 18A:16-2, district boards of education shall require candidates for employment who have received a conditional offer of employment to undergo a physical examination such as testing for usage of controlled or dangerous substances or to determine whether the candidate is able to perform, with reasonable accommodation, job-related functions pursuant to P.L. 101-336, Americans with Disabilities Act of 1990.
- (b) Pursuant to N.J.S.A. 18A:16-2, **a** district [boards] **board** of education may require physical or psychiatric examinations of a school district employee whenever, in the **district board of education's** judgment [of the district board of education], an employee

shows evidence of deviation from normal physical or mental health[.]. **The purpose of the physical or psychiatric examination shall be** to determine the [individual's] **employee's** physical and mental fitness to perform, with reasonable accommodation, the position [he or she] **the employee** currently holds, or to detect any health [risks] **risk(s)** to students and other employees. When a district board of education requires an employee to undergo [an individual] **a physical or psychiatric examination:**

1. The district board of education shall provide the employee with a written statement of [reasons] **the reason(s)** for the required examination.
 2. The district board of education shall provide the employee with a hearing, if requested.
 - [2.] i. The determination of such a hearing shall be appealable to the Commissioner pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:4, Appeals.
 3. The employee may **refuse**, without reprisal, [refuse] to waive [his or her] **their** right to protect the confidentiality of medical information, in accordance with P.L. 104-191, Health Insurance Portability and Accountability Act of 1996.
- (c) [Individual employees] **An individual employee** may provide health-status information, including medications, that may be of value to medical personnel in the event of an emergency requiring treatment. In such instances, an employee may also choose to share with the building principal and, if desired, with the certified school nurse, information regarding current health status to assure ready access in a medical emergency.
- (d) Health records of candidates for employment and of current employees, including computerized records, shall be secured, stored, and maintained separately from other

personnel files. Health records may be shared only with authorized individuals in accordance with N.J.S.A. 18A:16-5.

- (e) Pursuant to N.J.S.A. 18A:16-3, the district board of education shall bear the cost of examinations made by a physician or institution designated by the district board of education. However, the employee shall bear the cost if the examination is performed by a physician or institution designated by the employee with approval of the district board of education.

Subchapter 7. Student Records

6A:32-7.1 General considerations

- (a) This subchapter applies to all district boards of education, **charter schools, renaissance school projects, approved private schools for students with disabilities,** and private agencies that provide educational services by means of public funds. **Throughout this subchapter unless otherwise indicated, “district board of education” refers to the governing body for each of the five types of agencies.**
- (b) Each district board of education shall compile and maintain student records and regulate access **in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g, and 34 C.F.R. Part 99,** disclosure, or communication of information contained in [educational] **student** records in a manner that assures the security of [such] **the** records in accordance with this subchapter.
- (c) Student records shall contain only [such] information [as] **that** is relevant to the education of the student and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record.

- (d) The district board of education shall provide annual, written notification to parents, adult students, and emancipated minors of their rights in regard to student records and student participation in educational, occupational, and military recruitment programs. Copies of the applicable State and Federal laws and [local] **district board of education** policies shall be made available upon request. [District boards] **The district board** of education shall make every effort to notify parents and adult students in their dominant language.
- (e) [A nonadult] **Nonadult** students may assert rights of access only through [his or her] **their** parent(s). However, nothing in this subchapter shall be construed to prohibit certified school personnel from disclosing, at their discretion, student records to nonadult students or to appropriate persons in connection with an emergency, if [such knowledge] **the information contained in the record** is necessary to protect the health or safety of the student or other persons.
- (f) The parent or adult student shall have access to [his or her own] **the student's** records and have access to, or be specifically informed about, only [that] **the** portion of another student's record that contains information about [his or her child or himself or herself] **the student**.
- (g) Each district board of education shall establish written policies and procedures for student records that:
1. Guarantee access to persons authorized under this subchapter within 10 days of a request, but prior to any review or hearing conducted in accordance with N.J.A.C. 6A;
 2. Assure security of the **student** records;

3. Enumerate and describe the student records collected and maintained by the district board of education;
4. Provide for inclusion in a student record any educationally relevant information provided by the parent or adult student;
5. Allow for release of school contact directory information for official use, as defined in N.J.A.C. 6A:32-7.2;
6. Provide the parent or adult student a 10-day period to submit to the chief school administrator a written statement prohibiting the [institution from including] **inclusion of** any or all types of information about the student in any student information directory before allowing access to [such] **the** directory and school facilities to educational, occupational, and military recruiters pursuant to N.J.S.A. 18A:36-19.1 and P.L. [107-110] **114-95**, [9528] **§ 8528**, Armed Forces Recruiter Access to Students and Student Recruiting Information of the [No Child Left Behind Act of 2001] **Every Student Succeeds Act of 2015**;
7. Provide, pursuant to (b) above, the parent or adult student a 10-day period to submit to the chief school administrator a written statement to exclude information from any school directory for official use;
8. Assure limited access to student records by secretarial and clerical personnel pursuant to N.J.A.C. 6A:32-7.5;
9. Provide for the access and security of student records maintained in [a computerized] **an electronic** system; and
10. Maintain the confidentiality of all student records [with] **containing** name, Social Security number, address, and telephone number information, or [use] the

[substitute] address for certified participants in the Address Confidentiality Program pursuant to N.J.A.C. [5:61] **3A:71**.

- (h) All anecdotal information and assessment reports collected on a student shall be dated and signed by the individual who originated the data.
- (i) The chief school administrator, or [his or her] **the chief school administrator's** designee, shall require all [permitted] student records of currently enrolled students to be reviewed annually by certified school personnel to determine the education relevance of the [material] **information** contained therein. The reviewer shall cause [data] **information** no longer descriptive of the student or educational program to be deleted from the record[s], except that prior notice shall be given for [classified] students **with disabilities** in accordance with N.J.A.C. 6A:14, Special Education. [Such information] **The deleted information** shall be disposed of and not be recorded elsewhere. No record of any such deletion shall be made.
- (j) No liability shall be attached to any member, officer, or employee of any district board of education permitting access or furnishing student records in accordance with this subchapter.
- (k) When the parent's or adult student's dominant language is not English or the parent or adult student is deaf, the district board of education shall provide interpretation of the student records in the dominant language of the parent or adult student.
- (l) Student health records shall be maintained separately from other student records. Student health records also shall be [handled] **maintained** according to the requirements of this subchapter 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.

6A:32-7.2 School contact directory for official use

- (a) Each district board of education shall compile and maintain a school contact directory for official use that is separate and distinct from the student information directory.
- (b) School personnel shall provide information from the school contact directory for official use only to judicial and law enforcement personnel, and to medical personnel currently providing services to the student in question. Upon request from a court, other judicial agency, law enforcement agency, or medical service provider currently providing services to the student in question, school personnel shall promptly verify the enrollment of a student and provide the requester with all information about the student that is contained in the school contact directory for official use.
- [(b)] (c) [To exclude any information from the school contact directory for official use, the] **A parent, adult student, or emancipated minor shall notify in writing the district board of education [in writing] of their request to exclude any information from the school contact directory for official use.**

6A:32-7.3 Mandated student records

- (a) **This section applies only to district boards of education and charter school and renaissance school project boards of trustees. Throughout this section unless otherwise indicated, "district board of education" refers to the governing body of each of the three types of agencies.**

- [(a)] (b) Mandated student records shall include the following:

1. The student's name, address, telephone number, date of birth, name of parent(s), gender, standardized assessment results, grades, **record of daily** attendance, classes attended, grade level completed, year completed, and years of attendance;
- [2. Record of daily attendance;]
- [3.] **2.** Descriptions of **the student's** progress according to the **district board of education's** student [evaluation system used in the school district] **performance data**;
- [4.] **3.** History and status of physical health compiled in accordance with State regulations, including **immunizations and** results of any physical [examinations] **examination(s)** given by qualified school district employees [and immunizations];
- [5.] **4.** Records pursuant to rules and regulations regarding the education of students with disabilities; and
- [6.] **5.** All other records required by N.J.A.C. 6A.

6A:32-7.4 Maintenance and security of student records

- (a) The chief school administrator, or [his or her] **the chief school administrator's** designee, shall be responsible for the security of student records maintained in the school district and shall devise procedures for assuring that access to [such] **student** records is limited to authorized persons.
- (b) [School districts] **District boards of education** may store all [documents] **student records** either electronically or in paper format.
 1. When **student** records are stored electronically, proper security and backup procedures shall be administered.

- (c) Student health records, whether stored on paper or electronically, 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] **in accordance with N.J.A.C. 6A:32-7.1(l).**
- (d) Records shall be accessible during the hours in which the school program is in operation.
- (e) 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 **a student's** graduation[,] **or** termination from the school district, **or to** age 23, whichever is longer[, and]. **The mandated student records** shall be disposed of in accordance with N.J.S.A. 47:3-15 et seq.
- (f) A district board of education that establishes a 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 people permitted by Federal and State statute and regulations or stated in (e) below.]
- [(c)] **(b)** The district board of education may charge a reasonable fee for reproduction of student records, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-5, provided that the cost does not effectively prevent [the] parents or adult students from

exercising their rights under this subchapter or other Federal and State rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14.

(c) **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 people permitted by Federal and State statute and regulations or stated in (e) below.**

(d) Access to, and disclosure of, a student health record shall meet the requirements of the Family Education Rights and Privacy Act (**FERPA**), **20 U.S.C. §1232g and 34 C.F.R. Part 99 [(FERPA)]**.

(e) [Authorized organizations] **Organizations**, agencies, and persons **authorized to access student records** shall include only the following:

1. The student who has the written permission of a parent and the parent of a student under the age of 18 **regardless of** whether the child resides with the 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. An adult student and/**or** a parent who has the written permission of an adult student, except that the parent shall have access without **the adult student's** consent [of the student] as long as the **adult** student is financially dependent on the parent and enrolled in the public school system, or if the **adult** student has

been declared legally incompetent by a court of appropriate jurisdiction. The parent of [the] **a** financially dependent adult student may not disclose information contained in the adult student's record to a second or third party without the **adult student's** consent [of the adult student];

4. Certified school district personnel who are 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. 6A:16-2.4;
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. 6A:16-2.4:
 - i. An approved private school for [the disabled] **students with disabilities**;
 - 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;
6. To fulfill its legal responsibility, a district board of education shall have access through the chief school administrator, or [his or her] **the chief school administrator's** 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 portions of the record to the extent

necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to student files in which such staff are directed to enter or record information, and shall cease when the specific assigned task is completed;

8. Accrediting organizations to carry out their accrediting functions;
9. The Commissioner and Department staff members who are assigned responsibility that necessitates the review of such records;
10. Officials of other district boards of education within the State 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 that schools have been directed to compile by New Jersey statute, regulation, or authorized administrative directive shall be forwarded to the receiving school district, **agency, or institution** with written notification to the parent or adult student;
 - ii. Original mandated student records that a district board of education has required shall be forwarded to the receiving school district, **agency, or institution** 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:36-19a, shall be sent to the chief school administrator [or his or her designee] of the school district to which the student has transferred,

- or the chief school administrator's designee**, within 10 school days after the transfer has been verified by the requesting school district;
- iv. The chief school administrator, or [his or her] **the chief school administrator's** designee, shall request in writing all student records from the school district of last attendance within two weeks from the date that the student enrolls in the new school district;
 - v. Upon request, the chief school administrator [or his or her designee] of the school district of last attendance, **or the chief school administrator's designee**, shall 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 or other proof of the [child's] **student's** identity pursuant to N.J.S.A. 18A:36-25.1, shall be requested at the time of enrollment in a new school district;
11. Officials of the United States Department of Education assigned responsibilities that necessitate review of such records;
 12. Officers and employees of a State agency responsible for protective and investigative services for students [referred to the agency] pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, district boards of education shall ask the State agency for its cooperation in sharing the findings of an investigation;
 13. Agency caseworkers or other representatives of a State or local child welfare agency who have the right to access a student's case plan when the agency or

organization is legally responsible, in accordance with State law, for the care and protection of the student, consistent with 20 U.S.C. § 1232g(b)(1)(L).

14. Organizations, agencies, and persons from outside the school if they have the written consent of the parent or adult student. Organizations, agencies, and persons shall not transfer student record information to a third party without the written consent of the parent or adult student;
 15. Organizations, agencies, and individuals outside the school, other than those specified in this section, upon the presentation of a court order; and
 16. Bona fide researchers who explain to the chief school administrator the nature of the research project and the relevance of the records sought. [Researchers also shall satisfy] **Prior to the release of records to a researcher**, the chief school administrator, or [his or her] **the chief school administrator's** designee, **shall receive from the researcher written assurance** that the records will 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] **district boards of education and charter school and renaissance school project boards of trustees** shall adhere to requirements pursuant to [N.J.S.A. 47:1A-1 et seq.,] the Open Public Records Act (OPRA), **N.J.S.A.**

47:1A-1 et seq., and [20 U.S.C. §1232g; 34 CFR Part 99,] the Family Educational Rights and Privacy Act (FERPA), **20 U.S.C. §1232g; 34 CFR Part 99.**

- 1. When responding to OPRA requests from any party, including parties other than those listed in (e) above, a district board of education or charter school or renaissance school project board of trustees may release without consent records removed of all personally identifiable information, as such documents do not meet the definition of a student record. Before making any release, the district board of education or charter school or renaissance school project board of trustees shall have made a reasonable decision that a student's identity cannot be determined whether through single or multiple releases, or when added to other reasonably available information.**

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 **record**, 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.
 2. Authorized organizations, agencies, and persons from outside the school whose access requires the consent of parents or adult students shall submit to the chief school administrator, or [his or her] **the chief school administrator's** designee, the request in writing together with any required authorization.
 3. The chief school administrator, or [his or her] **the chief school administrator's** designee, shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage, or loss. In

every instance of inspection of student records by persons other than parents, students, or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the student record of the name(s) of persons granted access, the reason access was granted, the time and circumstances of inspection, the records [studied] **inspected**, and the purposes for which the data will be used.

4. Prior to disclosure of student records to organizations, agencies, or persons outside the school district pursuant to a court order, the district board of education shall give the parent or adult student at least three days' notice of the name of the requesting agency and the specific records requested unless otherwise judicially instructed. [Such] **The** notification shall be provided in writing, if practicable. Only records related to the specific purpose of the court order shall be disclosed.
 - i. Notice to the parent shall not be required when [he or she] **the parent** is party to a court proceeding involving child abuse and neglect or dependency matters, consistent with 20 U.S.C. § 1232g(b)(2)(B).
5. A record may be withheld from a parent or from an adult student only when the district board of education obtains a court order or is provided with evidence that there is a court order revoking the right to access. Only that portion of the record designated by the court order shall be withheld. When the district board of education has or obtains evidence of such court order, the parent or adult student shall be notified in writing within five days of [his or her] **the** request that access to the record has been denied and that the person has the right to appeal the decision to the court issuing the order.

6A:32-7.7 Rights of appeal for parents and adult students

(a) Student records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, [impermissible] **impermissible** disclosure, inclusion of improper information, or denial of access to organizations, agencies and persons. The parent or adult student may [seek to] **request**:

1. [Expunge] **Expungement of** inaccurate, irrelevant, or otherwise improper information from the student record;
2. [Insert] **Insertion of** additional data, as well as reasonable comments [as to] **regarding** the meaning and/or accuracy of the [records] **student record**; [and/or]
3. [Request an] **The** immediate stay of disclosure pending final determination of the challenged procedure as described in this subchapter[.]; **and/or**
4. **Immediate access to student records for organizations, agencies, and persons denied access pending final determination of the challenged procedure as described in this subchapter.**

(b) To request a change in the **student** record or to request a stay of disclosure pending final determination of the challenged procedure, a parent or adult student shall notify in writing the chief school administrator of the specific issues relating to the student record.

1. Within 10 school days of notification, the chief school administrator, or [his or her] **the chief school administrator's** designee, shall notify the parent or adult student of the school district's decision. If the school district disagrees with the request, the chief school administrator, or [his or her] **the chief school administrator's** designee, shall meet with the parent or adult student to resolve the issues set forth in the [appeal] **request**.

2. If the matter is not satisfactorily resolved, the parent or adult student has 10 school days to appeal [this] **the school district's** decision [the district board of education].
 3. If **an** appeal is made to the district board of education, **the district board of education shall render** a decision [shall be rendered] within 20 school days.
 4. The decision of the district board of education may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:3, Controversies and Disputes. At all stages of the appeal process, the parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issue.
 5. A record of the appeal proceedings and outcome shall be made a part of the student record with copies made available to the parent or adult student.
- (c) Appeals relating to student records of students with disabilities shall be processed in accordance with the requirements of (b) above.
- (d) Regardless of the outcome of an appeal, a parent or adult student shall be permitted to place in the student record a statement commenting upon the information in the student record or setting forth any reasons for [disagreement with the decision made in the appeal. Such statements] **contesting a portion of the student record, including the decision made in the appeal. The parent's or adult student's statement** shall be maintained as part of the student record as long as the contested portion of the **student** record is maintained. If the contested portion of the **student** record is disclosed to any party, the statement commenting upon the information shall also be disclosed to that party.

6A:32-7.8 Retention and disposal of student records

(a) This section applies to only district boards of education and charter school and renaissance school project boards of trustees. Throughout this section unless otherwise indicated, “district board of education” refers to the governing body of each of the three types of agencies.

[(a)] **(b)** A student record is considered to be incomplete and not subject to the provisions of the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., while the student is enrolled in the school district.

1. The [school] district **board of education** shall retain the student health record and the health history and immunization record according to the school district records retention schedule, as determined by the New Jersey State Records Committee.

[(b)] **(c)** Student records of currently enrolled students, other than [that] **the records** described in [(e)] **(f)** below, may be disposed of after the information is no longer necessary to provide educational services to a student. [Such] **The** disposition shall be [accomplished] **carried out** only after [written parental] **the parent** or adult student [notification] **has been notified in writing** and written [parental or adult student] permission has been granted, or after reasonable attempts [of such notification and reasonable attempts] to **notify the parent or adult student and to** secure [parental or adult student] permission have been unsuccessful.

[(c)] **(d)** Upon graduation or permanent departure of a student from the school district:

1. The parent or adult student shall be notified in writing that a copy of the entire student record will be provided to them upon request.

2. Information in student records, other than that described in [(e)] (f) below, may be disposed of, but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq. [Such] **The** disposition shall be [accomplished] **carried out** only after [written parental] **the parent** or adult student [notification] **has been notified in writing** and written [parental or adult student] permission has been granted, or after reasonable attempts [at such notification and reasonable attempts] to **notify the parent or adult student and to** secure [parental or adult student] permission have been unsuccessful and prior written authorization has been obtained from the New Jersey State Records Committee in the New Jersey Department of [State] **the Treasury**.

[(d)] (e) No additions shall be made to the record after graduation or permanent departure without the prior written consent of the parent or adult student.

[(e)] (f) The [New Jersey public] school district of last enrollment, graduation, or permanent departure of the student [from the school district] shall keep for 100 years a mandated record of a student's name, date of birth, name of parents, gender, health history and immunization, standardized assessment results, grades, attendance, classes attended, grade level completed, year completed, and years of attendance.

Subchapter 8. Student Attendance and Accounting

6A:32-8.1 School register

(a) This subchapter applies to all district boards of education, **charter schools, renaissance school projects, approved private schools for students with disabilities,** and private agencies that provide educational services by means of public funds. **Throughout this**

subchapter unless otherwise indicated, “district board of education” refers to the governing body of each of the five types of agencies.

- (b) District boards of education shall [be required to] carefully and accurately track enrollment and attendance of all students in a manual school register format or in an electronic format of the [school’s] **school district’s** choosing.
- (c) The Commissioner [shall] **will** issue and publish on the Department’s website [school register] guidance for recording student attendance in all public schools of the State operated by district boards of education, except adult high schools.
- (d) Student attendance shall be recorded in the school register during school hours on each day [school is] in session, **pursuant to N.J.A.C. 6A:32-8.3. An employee designated by the chief school administrator shall keep in the school register, attendance of all students, and shall maintain the attendance records in accordance with this subchapter and the guidance at (c) above.**
- [(e) School registers shall be kept for students attending preschool, kindergarten, grades one through five, grades six through eight, grades nine through 12, each preschool class for the disabled, each class for the disabled, shared-time classes for regular students, shared-time classes for students with disabilities, full-time bilingual education programs and vocational day programs, and summer schools operated by district boards of education.]
- [(f) (e) A student who has been placed on home instruction shall have [his or her] **their** attendance status recorded on the regular register for the program in which the student is enrolled. [For] **The student shall be marked absent for** the period beginning the first day the student is unable to attend school and ending the day before the first instructional day at the student’s place of confinement[, the student shall be marked absent]. [No

absences] **Absences** shall **not** be recorded for the student while on home instruction, providing the hours of instruction are no less than required by N.J.A.C. 6A:14-4.8 and 4.9 **and 6A:16-10.1 and 10.2**. The number of possible days [of enrollment] **in membership** for a student on home instruction shall be the same as for other students in the program in which the student is enrolled.

6A:32-8.2 School enrollment

- (a) The **school** enrollment in a [class] **program of instruction**, a school, or a school district shall be the total number of original **student** entries **in the school register** plus the number of re-entries, less the number of transfers, withdrawals, or dropouts in any such unit during a school year. The total number of original entries and re-entries, less the number of transfers, withdrawals, or dropouts, in all [classes] **program of instruction** and schools of a school district shall constitute the school enrollment for the district board of education during any school year.
- (b) [No] A student attending a school operated by a district board of education shall **not** be **concurrently** enrolled in more than one school register in any school district during a school year **with the exception of shared-time students**. [All students shall be enrolled as of the first day of attendance for the year.]
- (c) [No] A student shall **not** be enrolled in a school register until the student has reached **over the age of five years in accordance with N.J.S.A. 18A:38-1, Attendance at school free of charge. The district board of education may enroll students under** the following legal school ages:
1. Kindergarten: [more] **older** than four years and [less] **younger** than six years;
 - [2. Regional day school: more than five years; and]

2. **State-funded preschool program: at least three years of age and younger than five years; and**
 3. Preschool [disabled] **students with disabilities:** [more than] **at least** three years **of age** and [less] **younger** than five years.
- (d) Within 10 school days of the start of the school year, a school district shall determine whether a student who attended the previous year but not the current school year has an excused absence or has transferred, withdrawn, or dropped out of the school district.
- (e) Any student enrolled in a school district who moves to another school district in the same school year shall be included in the **school** register in the new school district upon enrollment.
- (f) The average daily enrollment in a school district for a school year shall be the sum of the **total** days [present and absent] **in membership** of all enrolled students when schools were in session during the year, divided by the number of days [schools were actually] in session. The average daily enrollment for the [classes] **program of instruction** or schools of a school district having varying lengths of terms shall be the sum of the average daily enrollments obtained for the individual [classes] **program of instruction** or schools.
- [(g) The average daily attendance in a school district for a school year shall be the sum of the days present of all enrolled students when schools were in session during the year, divided by the number of days schools were actually in session. The average daily attendance for the classes or schools of a school district having varying lengths of terms shall be the sum of the average daily attendance obtained for the individual classes or schools.]

6A:32-8.3 [School attendance] **Day in session**

- (a) [For purposes of school attendance, a] **A day in session** shall be a day on which the school is [open] **scheduled to provide instruction** and students are under the guidance and direction of a teacher(s) [or teachers] engaged in the teaching process. [Days] **A day** on which school is closed for [such] reasons **such** as holidays[,], **and** teachers' institutes, [and] **or** inclement weather **not under conditions set forth at N.J.A.C. 6A:32-13**, shall not be considered [as] **a day[s]** in session.
- (b) A [school] day **in session** shall consist of not less than four hours, **exclusive of recess and lunch periods**, except that one continuous session of two and one-half hours may be considered a full day in kindergarten.
- [(c) An approved kindergarten shall meet the following requirements:
1. Each kindergarten teacher shall be properly certified pursuant to N.J.A.C. 6A:9B, State Board of Examiners and Certification and in accordance with the *Abbott v. Burke* decision, *Abbott v. Burke*, 153 N.J. 480 (1998) ("*Abbott V*"); 177 N.J. 578 (2003) ("*Abbott X*").
 2. A balanced program in an approved facility with adequate equipment, materials and supplies shall be provided each child. This program is to be designed to meet the individual needs of every child and may include instruction in reading and other subjects when it has been determined that a child is ready for such instruction by the teacher of the class; and
 3. The maximum enrollment for a kindergarten class shall be 25 students per teacher and 21 students in an former Abbott school districts, in accordance with the *Abbott v. Burke* decision, *Abbott v. Burke*, 153 N.J. 480 (1998) ("*Abbott V*"); 177

N.J. 578 (2003) ("Abbott X"), and N.J.A.C. 6A:13-3.1 and 3.2 and 6A:13A-3.1(d).

The executive county superintendent of schools may give permission to increase the number of students in a non-Abbott classroom provided another teacher, an auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size.

- (d) A day of attendance shall be one in which a student is present for the full day under the guidance and direction of a teacher while school is in session. Whenever over-crowded conditions make it necessary to hold two separate sessions with a different group of students in each session, a student attending for all of either session shall be regarded as having attended for the full day. An excused absence for any reason shall not be counted as a day of attendance in the school register.
- (e) A half-day class shall be considered the equivalent of a full day's attendance only if in session for four hours or more, exclusive of recess periods or lunch periods.
- (f) A record of the attendance of all students on roll in a school register shall be kept each day that school is in session by a teacher or other authorized person. It shall be the duty of this person to keep the attendance records according to these rules and the specific instructions issued by the Commissioner.
- (g) No student shall be recorded as present unless the school is in session and the student so recorded is under the guidance and direction of a teacher in the teaching process.
- (h) A student shall be recorded as absent in the school register when not in attendance at a session of the school while a member of the school, except students excused due to religious holidays who shall be recorded as excused.

- (i) A student shall be recorded as either present, absent, or excused for religious observance, every day the school is in session after the student enters until the date the student is transferred to another school, transferred to an individual home instruction record, or officially leaves the school system.
- (j) The Commissioner shall annually prescribe a list of religious holidays on which it shall be mandatory to excuse students for religious observance upon the written request signed by the parent or person standing in loco parentis.
- (k) The mere presence of a student at roll call shall not be regarded as sufficient attendance for compliance with these rules. In a school which is in session during both the forenoon and the afternoon, a student shall be present at least one hour during both the forenoon and the afternoon in order to be recorded as present for the full day. In a school which is in session during either the forenoon or the afternoon, a student shall be present at least two hours in the session in order to be recorded as present for the full day.]

6A:32-8.4 Student attendance

- (a) **For all State attendance submissions, a student shall be recorded as present, absent, or excused for a State-excused absence, pursuant to (e) below, on every day the school is in session after the student enrolls until the date the student is transferred to another school or officially leaves the school district.**
- (b) **A record of attendance of all students shall be kept in accordance with N.J.A.C. 6A:32-8.1(c). The employee designated by the chief school administrator shall keep the attendance records according to this subchapter and the guidance issued by the Commissioner in accordance with N.J.A.C. 6A:32-8.1(c).**

- (c) A student enrolled in a school shall be recorded in the school register as present if the student participates in instruction or instruction-related activities for at least half a day in session whether the student is physically on school grounds, at an approved off-grounds location, or in a virtual or remote instruction setting, pursuant to N.J.A.C. 6A:32-13.**
- (d) A student enrolled in a school who is not participating in instruction or instruction-related activities pursuant to (c) above shall be recorded in the school register as absent unless the student is recorded as a State-excused absence, pursuant to (e) below.**
- (e) State-excused absences shall be as follows:**
- 1. Religious observance, pursuant to N.J.S.A. 18A:36-14, 15, and 16;**
 - i. The Commissioner, with approval of the State Board of Education, shall annually prescribe a list of religious holidays on which it shall be mandatory to excuse students for religious observance upon the written request signed by the parent or person standing in loco parentis.**
 - 2. Participation in observance of Veterans Day, pursuant to N.J.S.A. 18A:36-13.2;**
 - 3. Participation in district board of election membership activities, pursuant to N.J.S.A. 18A:36-33;**
 - 4. Take Our Children to Work Day;**
 - 5. College visit(s), up to three days per school year for students in grades 11 and 12; and**

6. **Closure of a busing school district that prevents a student from having transportation to the receiving school.**
- (f) **For absences that do not meet the criteria at (e) above, district boards of education may adopt policies that establish locally approved or excused absences consistent with N.J.A.C. 6A:16-7.6 for the purposes of expectations and consequences regarding truancy, student conduct, promotion, retention, and the award of course credit. However, an absence designated as excused by the district board of education pursuant to N.J.A.C. 6A:16-7.6 shall be considered as an absence in the submission to the State for the purpose of chronic absenteeism reporting, as set forth in N.J.A.C. 6A:32-8.6.**

6A:32-8.5 Average daily attendance

The average daily attendance rate in a school district school or program of instruction for a school year shall be the total number of the days present of all enrolled students, divided by the number of days in membership of all enrolled students. The student average daily attendance means the total number of days that a student is present in school divided by the total possible number of days in session.

6A:32-8.6 Absentee and chronic absenteeism rates

- (a) **A student's absentee rate shall be determined by subtracting the student's total number of days present from the student's days in membership, and dividing the result by the student's days in membership.**
 1. **State-excused absences shall not be included in a student's days in membership for purposes of calculating a student's absentee rate.**

- (b) **If a student's absentee rate is equal to or greater than 10 percent, the student shall be identified as chronically absent.**
- (c) **Each school with 10 percent or more of its enrolled students identified as chronically absent shall develop a corrective action plan to improve absenteeism rates. In accordance with N.J.S.A. 18A:38-25.1, the school will annually review and revise the corrective action plan, and present the revisions to the district board of education, until the percentage of students who are chronically absent is less than 10 percent.**

Subchapter 9. Athletics Procedures

6A:32-9.1 General requirements

- (a) A district board of education may adopt a program of **sport** activities [of sports] that complies with N.J.S.A. 18A:36-37.
- (b) [In cases in which] **If** the athletic facilities are not owned by the municipality or the district board of education, the district board of education shall require the owner to provide adequate safeguards for players and spectators. The field, room, court, track, stands, and surrounding premises shall be kept in good condition and free from hazards.
- (c) Upon the recommendation of the chief school administrator, the district board of education shall adopt and, thereafter, annually review a policy of emergency medical procedures for all practice sessions and competitive contests, games, events, or exhibitions with individual students or teams of one or more schools of the same or other school districts, whether conducted on public or private facilities. [Said] **The** policy shall be disseminated to appropriate personnel.

- (d) A student [representing his or her] **seeking to represent the** school in interscholastic athletic competition **and their parent, or an adult student**, shall sign a form furnished by the district board of education[, the wording of which]. **The form** shall embody [a] **the following:**
1. A request to be [enrolled as] a candidate for a place on a school **squad or team** in a specified sport[.];
 2. [The parent or adult student shall execute an a] **An** acknowledgement that physical hazards may be encountered[.]; **and**
 3. **Consent of the student’s parent or the adult student to participate.**
- [(e) Each candidate for a place on the school athletic squad or team shall submit a form furnished by the district board of education conveying the consent of his or her parent or the adult student to participate.]

Subchapter 10. Summer School Sessions

6A:32-10.1 General

- (a) A summer school session shall be operated by a district board of education in compliance with N.J.S.A. 18A:11-15.
- (b) Remedial, advancement, and enrichment courses may be offered **during a summer school session** to meet student needs.
- (c) Summer school sessions shall be separate from “extended school year services” as defined in N.J.A.C. 6A:14-1.3.
- (d) All school districts operating elementary and/or secondary summer school sessions shall conduct fire and school security drills pursuant to N.J.S.A. 18A:41-1.

6A:32-10.2 Costs and tuition

- (a) [For students domiciled within the school district, the] **The** district board of education may charge tuition **in accordance with N.J.S.A. 18A:11-15** for any course provided during a summer school session to a student who resides in the school district [in accordance with N.J.S.A. 18A:11-15].
- (b) [For students not domiciled within the school district, the] **The** district board of education may charge tuition **at an amount it determines** for any course provided during a summer school session [at an amount determined by the district board of education] **to a student not domiciled within the school district.**

6A:32-10.3 Staffing

- (a) In each school, a member of the administrative, supervisory, or teaching staff who is certified as an administrator shall be assigned the responsibilities of administration and supervision of the summer session.
- (b) [Teachers in] **District boards of education conducting** summer school sessions [conducted by district boards of education] shall **employ teachers who** possess valid certificates for **the** subjects taught. Curriculum enrichment may involve resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor, or teacher.

6A:32-10.4 Student assignment and credit

- (a) The assignment of students in a summer school session for remedial courses shall be based upon the recommendation of the principal of the school the student regularly

attends, in accordance with **district board of education** policies [established by the district board of education]. The principal's **written** recommendation shall state [in writing] the name of the subject(s) the student may take and the purpose for [which] each subject [is taken].

- (b) An evaluation and a description of work completed shall be included in the student's cumulative record[, and the]. **The** principal of the sending school shall determine the grade placement of the student.
- (c) To receive advanced credit for a subject not previously taken, the student shall receive class instruction in summer session under standards equal to [those] **the standards taught** during the regular term.
- (d) Full-year subjects given for remediation that carry credit or placement consequences for students shall be conducted for 60 hours of instruction under standards equal to **the standards taught** during the regular term or through an established number of curricular activities as determined by the district board of education.
- (e) Credit for work taken in an approved elementary or secondary school summer session shall be transferable in the same manner as work taken in any approved elementary or secondary school, in accordance with district board of education policy.
- (f) The principal shall give prior approval for work to be taken at other educational institutions or environments, which shall include, but not be limited to, other public and private schools, institutions of higher education, and online courses.
- (g) The amount of time a student spends [in] receiving class instruction shall become part of [his or her] **the student's** permanent record and shall be included whenever the **student's** record is transferred to another school.

Subchapter 11. Withdrawal from Regional School Districts

6A:32-11.1 Application and data for investigation of advisability of withdrawal or dissolution

- (a) [Any] **The district board of education of any school** district [board of education] constituting part of a limited-purpose regional school district, [or] the governing body of [such] **a limited-purpose regional** school district, or the governing body of any municipality constituting part of an all-purpose regional school district[,] may apply to the executive county superintendent to investigate the advisability of withdrawal of [such] constituent school district or municipality from the regional school district.
- (b) A majority of the boards of education of the school districts that constitute a limited-purpose regional school district and a majority of the governing bodies of the municipalities that constitute the constituent school districts of a limited-purpose regional school district may apply, by separate resolutions, to the executive county superintendent to investigate the advisability of the dissolution of the regional district. [Such]
- (c) **The** resolutions [shall be adopted by a recorded roll call vote of the majority of the full membership] requesting that the executive county superintendent make such **an** investigation **shall be adopted by a recorded roll call vote of the majority of the full membership.**
- (d) The resolution request(s) submitted to the executive county superintendent shall include the following information:
1. A general description of the regional school district and of the withdrawing constituent school district, including, but not limited to, the type of educational system, number of schools, grade levels served, community population, and geographical characteristics;

2. Enrollment data, including, but not limited to, the number of students enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollments, by grade level, for the succeeding five school years for both the withdrawing school district or municipality and the remaining regional school district, based on growth factors using average percentages for the last three school years;
3. The racial composition of the withdrawing school district's or municipality's student population enrolled in the regional school district, and the effect of such withdrawal upon the racial composition of the remaining student population of the regional school district;
4. Two appraisals of each school site that is part of the regional school district prepared by qualified appraisers.
 - i. If two or more constituent school districts or municipalities request such a study, the selection of the appraisers and the cost of the required appraisals shall be made jointly and shared; and
5. The proposed educational plan for the students from the withdrawing school district or municipality presently enrolled in the school(s) of the regional school district.

[(b)] (e) Within 21 days following adoption of the resolution, [such] **the adopting** body shall confer with the remaining constituent school districts and/or the governing bodies of the constituent municipalities, the regional district board of education, and the executive county superintendent to review the procedure required for withdrawal from a regional school district. [Such conference may be called by the] **The** executive county

superintendent **may call the conference** at the request of a constituent school district or municipality prior to its adoption of the resolution.

6A:32-11.2 Investigation and report by executive county superintendent

- (a) The executive county superintendent shall investigate the advisability of the withdrawal of the requesting constituent district from, or the dissolution of, the regional school district upon receipt of the resolution(s) and accompanying data pursuant to N.J.A.C.

6A:32-11.1. Within 60 days after receipt of [such] **the** request, the executive county superintendent shall issue a report, in accordance with N.J.S.A. 18A:13-52 or 18A:13-67, to governing bodies of the municipalities constituting the regional school district and the board of education of the regional school district. If the executive county superintendent's report addresses the withdrawal of a constituent school district(s) from, or the dissolution of, a [limited purpose] **limited-purpose** regional school district, the report shall also be issued to the **district** boards of education of the constituent school districts. When the executive county superintendent has begun [such] **the** investigation, no action shall be taken upon a subsequent request from another constituent school district or municipality of the same regional school district until the investigation, report, and action have been completed. The report shall be based on data [supplied by the petitioning school district(s) or municipality(ies),] including, but not limited to, the following:

1. A general description of the regional school district, including the number of constituent school districts, school buildings, area of the total school district, and area of the withdrawing school district or municipality;

2. Enrollment data, including the number of students enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollment, by grade level, for the succeeding five school years for both the withdrawing school district or municipality and the remaining regional school district. The estimated projected enrollments shall be based on growth factors using average percentages for the last three school years and a review of municipal planning documents (master plan elements, zoning maps), including any annual reports or summaries of land-use approvals within the past five years;
3. Enrollment data, by grade level, showing the racial composition of the present regional student population and the resulting racial composition for both the withdrawing school district or municipality and the remaining regional school district if withdrawal were to be approved;
4. The operating expenses of the regional school district for the present school year including the distribution of [such] current operating expenses among the constituent school districts or municipalities;
5. The equalized valuation of each constituent school district or municipality of the regional school district as set forth in N.J.S.A. 18A:7F-45;
6. The average equalized valuations of the real property of each constituent school district or municipality of the regional school district as set forth in N.J.S.A. 18A:24-1 et seq.;
7. The borrowing margin of each constituent school district or municipality of the regional school district as determined by N.J.S.A. 18A:24-1 et seq., and the

- revised borrowing margin of each constituent school district or municipality and the withdrawing school district or municipality, if approval were to be granted;
8. The apportionment by dollar amounts and percentages of debt service for the current school year among all the constituent school districts or municipalities of the regional school district;
 9. The replacement costs of school buildings, additions, grounds, furnishings, and equipment of the regional school district, and the replacement cost of any school building, additions, grounds, furnishings, and equipment of the regional school district situated in the withdrawing school district or municipality. [School] **The Department will calculate the school** building replacement costs [will be calculated by the Office of School Facilities] as follows:
 - i. The current overall cost per square foot for school construction in New Jersey, updated in the fall of each year, will be multiplied by the gross area of the building. The figure shall include construction costs, moveable and built-in furniture and equipment, and fees; and
 - ii. Site costs will be excluded since they are already included under N.J.A.C. 6A:26-7.1(a).
 10. The amount of indebtedness, if any, to be assumed by the withdrawing constituent school district or municipality; **and**
 11. The distribution of assets and liabilities of the existing regional school district and remaining regional school district following withdrawal in the manner provided by N.J.S.A. 18A:8-24[;].

(b) The executive county superintendent report shall include, but not be limited to, the following:

[12.] **1.** A proposed educational plan for the withdrawing constituent school district or municipality, if withdrawal were to be approved, including the effects of such withdrawal upon the educational program of the remaining regional school district and on the provision of adequate public school facilities and services at a reasonable cost;

[13.] **2.** A summary of the advantages and disadvantages of withdrawal to both the withdrawing constituent school district or municipality and the remaining regional school district; and

[14.] **3.** A recommendation from the executive county superintendent regarding the request for withdrawal from the regional school district.

[(b)] **(c)** Upon adoption of a resolution[,] in accordance with N.J.S.A. 18A:13-51 or 18A:13-66, the board of education of the regional school district shall not incur any additional indebtedness for capital projects, pending either the rejection of the proposal at a special school election or an effective date of withdrawal as determined by the Commissioner.

6A:32-11.3 Special school election

(a) If the application is granted upon completion of the procedures contained in N.J.S.A. 18A:13-54 to 56 or 18A:13-69 to 71, the executive county superintendent shall confer with the regional district board of education and the boards of education of the constituent school districts of a [limited purpose] **limited-purpose** regional school district or the constituent municipal governing bodies of an [all purpose] **all-purpose**

regional school district and fix a day and time for holding a special school election, in accordance with N.J.S.A. 18A:13-57 or 18A:13-72.

- (b) To be effective, the proposal shall be adopted by a majority of the legal votes cast within the withdrawing constituent school district or municipality, and, in addition, a majority of the combined legal votes cast within the remainder of the regional school district.

6A:32-11.4 Final determination of board of review

The board of review, which shall consist of the Commissioner as chairperson, the State Treasurer or [his or her] designee, and the Director of the Division of Local Government Services in the Department of Community Affairs, shall include in its final determinations required by N.J.S.A. 18A:13-56 or 18A:13-71 any specific conditions under which its consent is granted to ensure that a thorough and efficient system of public schools will be maintained in the withdrawing school district(s) or municipality(ies) and the remaining regional school district, or in the remaining constituent school districts in the event of a dissolution.

6A:32-11.5 Effective date of withdrawal

If approved at the special school election, the withdrawal of the school district or municipality shall become effective upon a date to be determined by the Commissioner, pursuant to N.J.S.A. 18A:13-59 or 18A:13-74.

[Subchapter 12. Student Behavior]

[6A:32-12.1 Student attendance]

- [(a) The average daily attendance rate for each school district shall average 90 percent or higher as calculated for the three years prior to the school year in which the school district is monitored.
- (b) Each school district with a three-year average below 90 percent shall develop a district improvement plan to improve student attendance, pursuant to N.J.A.C. 6A:30-5.2.]

Subchapter 12. Kindergarten

6A:32-12.1 Kindergarten programs

- (a) School districts offering approved kindergarten programs shall provide each student enrolled with a balanced program using adequate equipment, materials, and supplies. School districts shall design a balanced kindergarten program to meet the individual needs of every student and may include instruction in reading and other subjects when the teacher of the class determines that a student is ready for such instruction.**
- (b) Each kindergarten teacher shall be properly certified pursuant to N.J.A.C. 6A:9B, State Board of Examiners and Certification, and in accordance with the Abbott v. Burke decision, Abbott v. Burke, 153 N.J. 480 (1998) (“Abbott V”); 177 N.J. 578 (2003) (“Abbott X”).**
- (c) School districts that are not subject to the Abbott v. Burke decisions at 153 N.J. 480 (1998) and 177 N.J. 578 (2003) (“Abbott decisions”) or the provisions of N.J.A.C. 6A:13-3.2 shall maintain a maximum enrollment for a kindergarten classroom of 25 students per teacher. School districts subject to the Abbott decisions or in which 40**

percent or more of the students are “at-risk” as defined in P.L. 2007, c. 260 shall follow the provisions for kindergarten at N.J.A.C. 6A:13-3.2.

- 1. School districts that are not subject to the Abbott decisions or the provisions of N.J.A.C. 6A:13-3.2 may submit a written request to the executive county superintendent for permission to increase the number of students in a kindergarten classroom, provided another teacher, an auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size.**

6A:32-12.2 (Reserved)

Subchapter 13. [(Reserved)] Virtual or Remote Instruction

6A:32-13.1 [(Reserved)] **Virtual or remote instruction**

- (a) This section applies to all district boards of education, charter school and renaissance school project boards of trustees, and private agencies that provide educational services by means of public funds. Throughout this section unless otherwise indicated, “district board of education” refers to the governing body of each of the four types of agencies.**
- (b) If the State or local health department determines that it is advisable to close, or mandates closure of, the schools of a school district due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days, the chief school administrator shall have the authority to implement the school district’s program of virtual or remote instruction, pursuant to N.J.S.A. 18A:7F-9.**

- 1. If implemented by the chief school administrator, the school district's program of virtual or remote instruction shall be provided to an enrolled student, whether a general education student in preschool through grade 12 or a student with a disability aged three to 21.**
 - i. The school district shall provide students with a disability with the same educational opportunities provided to general education students to the extent appropriate and practicable.**
 - ii. Related services may be delivered to general education students and students with a disability through the use of electronic communication or a virtual or online platform, as appropriate.**
- (c) The district board of education may apply to the 180-day requirement established pursuant to N.J.S.A. 18A:7F-9.b, one or more days of virtual or remote instruction under the following conditions:**
- 1. Virtual or remote instruction is provided to students on the day(s) that some or all of the programs of instruction of the school district were closed to in-person instruction;**
 - 2. The virtual or remote instruction meets the Commissioner-established criteria for the occurrence of one of the events at (b) above; and**
 - 3. The district board of education submitted a proposed program of virtual or remote instruction to the Commissioner within 30 days of the effective date of P.L. 2020, c. 27 and, thereafter, by July 31 annually.**
 - i. If the district board of education is unable to complete and submit a proposed program by July 31 annually, and the school district is**

required to close its schools for a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the Commissioner may retroactively approve the program.

- (d) If provided under the district board of education’s program that has been approved by the Commissioner, student attendance for a day of virtual or remote instruction shall be accounted for in accordance with N.J.A.C. 6A:32-8.4 for the purposes of meeting State and local graduation requirements, the awarding of course credit, and other matters as determined by the Commissioner.**

6A:32-13.2 [(Reserved)] Virtual or remote instruction in approved private schools for students with disabilities (APSSDs)

- (a) If the State or local health department determines that it is advisable to close, or mandates closure of, an approved private schools for students with disabilities (APSSD) due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days, the full-time non-teaching principal shall have the authority to implement the APSSD’s Department-approved program of virtual or remote instruction.**
- (b) The APSSD may apply one or more days of virtual or remote instruction to qualify as a day of instruction for the purposes of calculating tuition pursuant to N.J.S.A. 18A:46-21.1.a, under the following conditions:**

- 1. Virtual or remote instruction is provided to students on the day(s) that some or all of the programs of instruction of the APSSD was closed to in-person instruction;**
 - 2. The virtual or remote instruction meets the Commissioner established criteria for the occurrence of one of the events at (a) above; and**
 - 3. The APSSD submitted a proposed program of virtual or remote instruction to the Commissioner and the sending district board(s) of education within 30 days of the effective date of P.L. 2020, c.27 and, thereafter, by July 31 annually.**
 - i. If the APSSD is unable to complete and submit a proposed program by July 31 annually, and the APSSD is required to close for a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure, the Commissioner may retroactively approve the program.**
- (c) If provided under a Commissioner-approved program, student attendance for a day of virtual or remote instruction shall be accounted for in accordance N.J.A.C. 6A:32-8.4 for the purposes of meeting State and local graduation requirements, the awarding of course credit, and other matters as determined by the Commissioner.**
- (d) The virtual or remote instruction shall be consistent with the student's individualized education program (IEP) to the extent appropriate and practicable and shall meet the New Jersey Student Learning Standards.**

6A:32-1.3. (Reserved)

Subchapter 14. Voter Registration

6A:32-14.1 Distribution

District boards of education, appropriate school official(s) in nonpublic schools with high schools, and private agencies that provide educational services to high schools by means of public funds shall provide to each eligible high school student prior to the school year's graduation date a voter registration form, a summary of voter registration eligibility requirements, and materials describing the role of a citizen and the importance of voting, pursuant to N.J.S.A. 18A:36-27.

6A:32-14.2 Statement of assurance

The chief school administrator of a public school district, the administrator of a nonpublic school with high schools, or the head administrator of a private agency that provides educational services for high schools by means of public funds shall sign a statement of assurance and submit it to the executive county superintendent no later than June 30 each year. The statement of assurance shall affirm the distribution of voter registration forms, a summary of voter registration eligibility requirements, and materials describing the role of a citizen and the importance of voting.

Subchapter 15. (Reserved)