

## **Proposed Readoption with Amendments of N.J.A.C. 6A:17, Education for Homeless Children and Students in State Facilities**

The following is the accessible version of the proposed readoption with amendments of N.J.A.C. 6A:17. The first discussion level document includes two sections – [summary of the proposed rulemaking](#) and [text of the chapter's rules and proposed amendments](#).



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DEPARTMENT OF EDUCATION  
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**First Discussion**  
**July 14, 2021**

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*Acting Commissioner*

To: Members, State Board of Education

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

Subject: N.J.A.C. 6A:17, Education for Homeless Children and Students in State Facilities

Reason for Action: Readoption with amendments

Authority: N.J.S.A. 18A:7B-1 et seq., 18A:7F-43 et seq., and 18A:38-1.d and 19, and the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act of 2015 (P.L. 114-95)

Sunset Date: September 10, 2021

### Summary

The Department of Education (Department) proposes to readopt with amendments N.J.A.C. 6A:17, Education for Homeless Children and Students in State Facilities. The chapter sets forth rules to ensure homeless children and students placed in State facilities are provided a thorough and efficient education. The chapter is scheduled to expire on September 10, 2021, pursuant to N.J.S.A. 52:14B-5.1.b.

N.J.A.C. 6A:17, Students at Risk of Not Receiving a Public Education, was first adopted by the State Board of Education effective February 19, 2002. The chapter was amended effective May 3, 2004, and August 1, 2005, to reflect changes in Federal law under the No Child Left Behind Act of 2001 (NCLB). The chapter was readopted with amendments effective May 7, 2007. At that time, the chapter also was renamed “Education for Homeless Children and Students in State Facilities.” The chapter was subsequently readopted with amendments effective September 10, 2014.

The chapter is aligned to the Federal McKinney-Vento Homeless Assistance Act (McKinney-Vento Act), which defines for states the educational rights of homeless children and youth. In December 2015, the McKinney-Vento Act was reauthorized by Title IX, Part A, of the Every Student Succeeds Act (ESSA).

The proposed amendments at N.J.A.C. 6A:17 are necessary to effectuate the provisions in the ESSA that removed children in any phase of resource family care proceedings from being considered “homeless” under the McKinney-Vento Act. The proposed amendments also will clarify a school district’s fiscal responsibility when a homeless child is enrolled in a school district other than the school district of residence and when a homeless student is deemed

domiciled or becomes permanently housed. The Department also proposes throughout the chapter, including the chapter's title, to replace "homeless children" with "homeless children and youths" to update terminology.

The proposed amendments and new rules also will align the chapter with the ESSA's requirements for the educational stability of children in resource family care. "Resource family care," which includes "resource family home," 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 Annotated. As "resource family" is the preferred term, the Department proposes to replace "foster" with "resource family" throughout the chapter. The Department also proposes to add "and Educational Stability for Children in Resource Family Care" at the end of the chapter's title.

The Department solicited input regarding the [ESSA State Plan](#) through stakeholder meetings conducted across the State and an email address that continues to receive comments from educators, parents, and community members regarding implementation. The ESSA-required Committee of Practitioners meets regularly and provides input regarding policies and activities related to the implementation of ESSA and the development of the proposed amendments and new rules.

The proposed readoption with amendments will advance the Department's vision to increase 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. The proposed amendments and new rules also will implement provisions for the educational stability of children in resource family care by promoting the consistency in educational services afforded to students who reside with their parent(s) for the full school year.

The Department proposes limited amendments at Subchapter 3, Educational Programs for Students in State Facilities, to remove references to the Department of Human Services since the subchapter no longer applies to that agency. The Department plans in 2021 to collaborate with the other State agencies to which the subchapter applies (Departments of Corrections and Children and Families and the Juvenile Justice Commission) to review the rules and discuss possible amendments. The Department anticipates proposing amendments in a future rulemaking to update the subchapter and address any changes that may be necessary as the result of the current public health emergency related to COVID-19.

The following is a summary of the rules proposed for readoption, as well as the proposed amendments and new rules. Unless otherwise noted, proposed amendments are to update terminology or New Jersey Administrative Code cross-references, or for grammatical or stylistic improvement.

## **Subchapter 1. General Provisions**

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

The chapter's rules are intended to ensure homeless children and students placed in State facilities are provided a thorough and efficient education. The rules establish uniform Statewide policies and procedures to ensure the enrollment of homeless children and to respond to appeals made by parents or other parties related to the enrollment of homeless children. The rules also identify general program requirements related to the operation, administration, and approval of educational programs in State facilities.

The Department proposes to amend this section to add “and children in resource family care” before “are provided” in the first sentence. The Department also proposes to add “[t]he chapter further establishes policies and procedures to ensure the educational stability of children in resource family care” at the end. The proposed amendments will reflect the inclusion of the ESSA’s requirements for the educational stability of children in resource family care.

### **N.J.A.C. 6A:17-1.2 Definitions**

This section establishes definitions relevant to the chapter.

The Department proposes to amend the section to include definitions relevant to the ESSA’s requirements for the educational stability of children in resource family care. The proposed definitions include:

“Best interest determination” means the school placement decision made by the Division of Child Protection and Permanency (DCP&P) based on the factors considered as set forth at N.J.S.A. 30:40C-26b.

“DCP&P” means the Division of Child Protection and Permanency, which is the division in the New Jersey Department of Children and Families (DCF) that has the responsibility for the placement of children in resource family care.

“Educational Stability School District Notification” means the notification generated by DCP&P pursuant to N.J.S.A. 30:4C-26b.h.

“Point of contact” means the employee identified in each school district who facilitates all activities needed to ensure enrollment and attendance of children in resource family care.

“Resource family care” means 24-hour substitute care for children placed away from their parent(s) or guardian(s) and for whom DCP&P has placement and care responsibility. The term is synonymous with the term “foster care” as defined in the ESEA, as reauthorized by the ESSA, and includes “resource family home” found elsewhere in the New Jersey Administrative Code and in the New Jersey Statutes Annotated.

“School of origin” for a child in resource family care means the school district in which a child was enrolled prior to a change in the child’s care, custody, or guardianship. If a child’s resource family care placement changes, the school of origin then would be considered the school district in which the child is enrolled at the time of the placement change. For example, a student enters resource family care and changes residences, meaning that the student now lives 10 miles away from the student’s school of origin (School A) and the closest school is School B. DCP&P and the school district determine that it is in the student’s best interest to attend School B. One year later, the student changes resource family care placement and, therefore, changes residences. The student now lives five miles away from School B and the closest school is School C. For the purposes of determining which school is in this child’s best interest, DCP&P and the school would consider School B as the school of origin. The proposed term “school of origin” will align with the term as defined in the ESSA.

The Department proposes to amend the existing definition of “school district of residence,” which includes meanings for the term’s use in relation to homeless children and students in a State facility. The Department proposes to delete “or guardian” after “parent” because “parent” is a defined term and includes “legal guardian.” The Department proposes the same amendment throughout the chapter, where necessary. The Department also proposes to add the following at the end to establish the term’s meaning for children placed in resource family care: “In the case of a child placed in resource family care prior to September 9, 2010, in

accordance with P.L. 2010, c. 69, the ‘school district of residence’ means the school district in which the resource family care parent(s) resides. In the case of a child placed in resource family care on or after September 9, 2010, in accordance with P.L. 2010, c. 69, the ‘school district of residence’ means the present school district of residence of the parent(s) with whom the child lived prior to the most recent placement in resource family care.” For example, a student is placed in resource family care in 2012. At that time, the parent resided in School District A, but the resource family home into which the student was placed is located in School District B. School District A is the district of residence. In 2015, the student moved to a different resource family care home that is located in School District C. But the student’s parent resided in School District D that year. School District D would be the district of residence and, therefore, responsible for paying the tuition and transportation.

## **Subchapter 2. Education of Homeless Children**

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

This section sets forth the scope of the subchapter, which applies to district boards of education providing general education services to students in preschool through grade 12 and special education services to students ages three through 21. The rule also states that nothing in this subchapter shall limit the educational rights of homeless children or school district responsibilities under Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. §§ 11431 et seq.).

### **N.J.A.C. 6A:17-2.2 Determination of homeless status**

This section outlines the temporary living situations that constitute homeless status and for which district boards of education must deem children “homeless.”

The Department proposes to amend N.J.A.C. 6A:17-2.5(a), which requires a district board of education **to** determine that a child is homeless for purposes of this subchapter when the child resides in any of the locations specified at N.J.A.C. 6A:17-2.5(a)1 through 5. The Department proposes to replace “[a] district board of education” with “[t]he district board of education for the school district of residence” to clarify which district board of education is responsible for making the determination of a student’s homeless status. For example, a student is temporarily housed in a shelter with their parent in School District A. The parent had been living in School District B prior to experiencing homelessness. School District B would be the school district of residence and its district board of education would be responsible for making the determination of homeless status.

The Department proposes to delete N.J.A.C. 6A:17-2.2(a)5, which requires a district board of education to determine a child is homeless if the child resides in any temporary location in which children and youths are awaiting foster care placement. The proposed deletion will ensure consistency with Section 725(2) of the McKinney-Vento Act, as amended by Title IX of ESSA, which removed “awaiting foster care” from the definition of “homeless children and youths.”

### **N.J.A.C. 6A:17-2.3 Responsibilities of the school district of residence**

This section sets forth the responsibility of the school district of residence for the education of homeless children and youths. The rules also delineate the inherent responsibilities of determining school district enrollment in consultation with parents and fiscal responsibility until the student is permanently housed or deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d.

The Department proposes amendments at N.J.A.C. 6A:17-2.3(b), which requires the school district of residence's chief school administrator or designee to determine a homeless child's school district of residence based upon information received from the parent, the Department of Human Services (DHS) or DCF, a shelter provider, another school district, an involved agency, or a case manager. The Department proposes to delete references to DHS, DCF, and case manager, which are considered entities acting in loco parentis for children in resource family care, as such children no longer meet the criteria for homelessness pursuant to ESSA. The same amendments are proposed at N.J.A.C. 6A:17-2.4(b).

#### **N.J.A.C. 6A:17-2.4 Designation of school district liaisons and their responsibilities**

This section requires the chief school administrator to designate a school district liaison for the education of homeless children and youths. The rules also set forth the responsibilities inherent to the liaison position.

The Department proposes amendments at N.J.A.C. 6A:17-2.4(a)3, which requires the school district homeless liaison to ensure homeless families, children, and youth receive educational services for which they are eligible, including Head Start and Even Start programs and other educational and social services. The Department proposes to delete the reference to the Even Start program as an educational service available to homeless families because the program has been eliminated under the ESSA.

#### **N.J.A.C. 6A:17-2.5 School district enrollment**

This section sets forth the processes for deciding the school district of enrollment for homeless children and youths after consultation with the student's parent.

#### **N.J.A.C. 6A:17-2.6 Parental rights**

This section confirms that the parent retains all rights under the subchapter, unless parental rights have been terminated by a court of competent jurisdiction.

#### **N.J.A.C. 6A:17-2.7 Disputes and appeals**

This section sets forth the dispute and appeals process when a dispute occurs regarding the determination of homelessness or the determination of the school district of enrollment made by the school district of residence, when a school district designated as the school district of residence disputes its designation as the school district of residence, or where no designation can be agreed upon by the involved school districts.

The Department proposes amendments at N.J.A.C. 6A:17-2.7(a), which, in part, requires that, when a school district of residence or the child's parent(s) disputes the determination of homelessness or the determination of the school district of enrollment, the chief school administrator(s) or designee(s) of the involved school district(s) or the child's parent(s) immediately notify the executive county superintendent. The rule also requires the executive county superintendent, in consultation with the Department's McKinney-Vento Homeless Education Coordinator or designee, to immediately decide the child's status. The Department proposes to replace "immediately shall decide the child's status" with "shall decide the child's status within five business days of receipt of the dispute." The proposed amendment will make the timeline for response more reasonable and consistent with current practice.

The Department proposes amendments at N.J.A.C. 6A:17-2.7(b), which requires the chief school administrator(s) or designee(s) of the involved school districts to immediately notify the

executive county superintendent when a school district designated as the school district of residence disputes the designation or where no designation can be agreed upon by the involved school districts. The rule also requires the executive county superintendent to make a determination immediately, if possible, but no later than within 48 hours. The Department proposes to replace “immediately, if possible, but no later than within 48 hours” with “within five business days of receipt of the dispute and, when necessary, in consultation with the Department’s Homeless Coordinator.” The proposed amendment will make the timeline for response more reasonable and consistent with current practice.

### **N.J.A.C. 6A:17-2.8 Tuition**

This section outlines the assignment of responsibility for the tuition and related costs for homeless children and youths.

The Department proposes amendments at N.J.A.C. 6A:17-2.8(a), which requires the school district of residence to pay to the school district of enrollment the tuition costs for a homeless child enrolled in a school district other than the school district of residence until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction. The rule also states the school district of residence no longer has to pay tuition to the school district of enrollment when the parent establishes a permanent residence or is deemed domiciled in another jurisdiction. The Department proposes to replace “[a]t that time, the school district of residence shall no longer pay tuition to the school district of enrollment” with “[a]t that time, the school district of residence or the school district in which the parent has been deemed domiciled shall pay tuition to the school district of enrollment.” As the existing rule has caused confusion as to when a school district no longer has to pay tuition and the school district of residence can change when a parent establishes a permanent residence, the proposed amendments will clarify when a school district must pay tuition for a homeless child enrolled in a school district other than the school district of residence. The Department proposes the same amendments at N.J.A.C. 6A:17-2.8(b), which concerns the school district of residence’s listing of a homeless child enrolled in a school district other than the school district of residence on the annual Application for State School Aid (ASSA).

The Department proposes amendments at N.J.A.C. 6A:17-2.8(c)3, which requires the State to assume financial responsibility for the tuition of a homeless child who resides in a Department of Community Affairs-licensed emergency shelter or transitional living facility due to domestic violence for more than a year combined for the duration of the placement. The Department proposes to replace “Department of Community Affairs-licensed emergency shelter or transitional living facility due to domestic violence for more than a year combined for the duration of the placement” with “domestic violence shelter, homeless shelter, or transitional living facility located in a school district other than the school district of residence for more than a year during the placement.” The proposed amendment will align the rule more closely with the referenced State statute. The Department also proposes to add a reference to N.J.S.A. 18A:7B-12.1 as it also addresses the State’s financial responsibility for homeless students in the applicable situations.

The Department proposes to recodify existing N.J.A.C. 6A:17-2.8(c)3i, which requires the State to pay to the school district in which the child is enrolled the weighted base per pupil amount calculated and the appropriate security and special education categorical aids per pupil when the State assumes fiscal responsibility for the tuition of a homeless child, as new N.J.A.C. 6A:17-2.8(d). The Department also proposes to add “under the circumstances at (c) above” after “[w]hen the State assumes fiscal responsibility for the tuition of a homeless child” to clarify it applies to all three situations at N.J.A.C. 6A:17-2.8(c).

## **Subchapter 3. Educational Programs for Students in State Facilities**

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

This section states that Subchapter 3 applies to all educational programs provided by the Department of Corrections, the Department of Children and Families, the Department of Human Services, and the Juvenile Justice Commission in accordance with N.J.S.A. 18A:7B-1 et seq. The rule also states that educational programs and services shall be provided to students in State facilities ages five through 20 and for students with disabilities ages three through 21 who do not hold a high school diploma.

### **N.J.A.C. 6A:17-3.2 Educational program objectives and requirements**

This section sets forth the responsibilities and requirements for State agencies when developing and implementing educational programs in facilities under their administration.

### **N.J.A.C. 6A:17-3.3 Students with a disability**

This section requires each State agency to ensure all students with a disability who reside in the agency's facilities are provided a free and appropriate public education as set forth under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq.. The rules also require each State agency to provide special education and related services as stipulated in a student's IEP in accordance with the rules governing special education at N.J.A.C. 6A:14.

### **N.J.A.C. 6A:17-3.4 Staffing and class size**

This section requires each State agency to employ the educational personnel required to ensure the provision of programs and services pursuant to the subchapter. The rules also make each State agency responsible for ensuring that all educational personnel are appropriately certified and receive professional development. The section further requires classes for general education students in State facilities to be limited to 12 students unless otherwise approved by the Department.

### **N.J.A.C. 6A:17-3.5 Facilities**

This section requires each State agency to ensure all buildings and facilities used for educational programs comply with the provisions of N.J.A.C. 6A:26, Educational Facilities, where applicable. The rules also require each State agency to ensure all educational programs are provided in locations separate from sleeping areas, except where appropriate for safety or medical reasons.

### **N.J.A.C. 6A:17-3.6 Student records and reports**

This section sets forth the school district and State agency responsibilities related to the maintenance and transfer of educational records and reports for students in State facilities.

### **N.J.A.C. 6A:17-3.7 Approval process for funding**

This section states that the approval and funding of educational programs shall be in accordance with N.J.S.A. 18A:7B-2 and 18A:7F-43 et seq., or other applicable law. The rules also set forth the application and approval processes for the funding of State facility education programs.

## **Subchapter 4. Educational Stability for Children in Resource Family Care**

The Department proposes new Subchapter 4 to set forth rules, pursuant to ESSA, to ensure the educational stability of children placed in resource family care.

### **N.J.A.C. 6A:17-4.1 Purpose and scope**

Proposed N.J.A.C. 6A:17-4.1(a) describes the subchapter's purpose, which is to ensure children placed in resource family care are provided a thorough and efficient education and, thereby, to improve their educational outcomes. The proposed subchapter also will establish uniform Statewide policies and procedures to ensure the Department and school districts work in collaboration with DCP&P to provide for the educational stability of children placed in resource family care.

Proposed N.J.A.C. 6A:17-4.1(b) states that nothing in the subchapter will limit the educational rights and educational stability of children placed in resource family care or the responsibilities of school districts under ESSA Section 1111(g)(1)(E), including the following circumstances. A child in resource family care placement remains in the child's school district of residence unless a determination has been made that remaining in the school district of residence is not in the child's best interest. Immediate enrollment and records transfer must occur between each school district's designated point of contact, as required by the ESSA.

### **N.J.A.C. 6A:17-4.2 School district responsibilities**

This proposed section will require each district board of education to identify a point of contact. Under the proposed section, each district board of education also will be required to develop policies and procedures to ensure the following for children in resource family care: local transportation, immediate enrollment upon receipt of an Educational Stability School District Notification from DCP&P, immediate record transfer upon receipt of an Educational Stability School District Notification from DCP&P, and continued enrollment for the duration of placement in resource family care and a determination of whether children who are reunited with their parent(s) during the academic year can continue enrollment in the school district. The proposed section is consistent with requirements in ESSA Section 1112(c)(5) and at N.J.A.C. 6A:17-2.5(h).

### **N.J.A.C. 6A:17-4.3 Point of contact role and responsibilities**

Proposed N.J.A.C. 6A:17-4.3(a) will require the point of contact to do the following upon receipt of an Educational Stability School District Notification from DCP&P: ensure the child in resource family care is immediately enrolled in, and regularly attends, school; implement the local transportation procedures for the child in resource family care; facilitate the transfer of records; facilitate data sharing with DCP&P, consistent with the Family Educational Rights and Privacy Act (FERPA) and other privacy protocols; and provide DCP&P the information relevant to assisting with best interest determinations, in accordance with the process set forth at N.J.S.A. 30:4C-26b.

Proposed N.J.A.C. 6A:17-4.3(b) will require the point of contact to provide to school district staff professional development and training on how to ensure the educational stability of children in resource family care.

The proposed section is consistent with requirements in ESSA Section 1112(c)(5)(A).

### **N.J.A.C. 6A:17-4.4 Immediate enrollment and records transfer**

Proposed N.J.A.C. 6A:17-4.4(a) will require the school district selected by DCP&P to immediately enroll a child in resource family care when DCP&P makes a best interest determination that remaining in the school district of residence is not in a child's best interest, even if the required documentation is not available for the child.

Proposed N.J.A.C. 6A:17-4.4(b) will require the school district of enrollment to immediately contact the child's school of origin to obtain all relevant academic records and pertinent documentation.

Proposed N.J.A.C. 6A:17-4.4(c) will require enrollment in the school district according to DCP&P's best interest determination to continue for the duration of the child's time in resource family care. If the child reunites with the child's parent(s) or guardian(s) during the academic year, enrollment in the school district according to DCP&P's best interest determination may continue for the remainder of the academic year upon request by the parent(s) or guardian(s).

The proposed section is consistent with requirements in ESSA Section 1111(g)(1)(E).

### **N.J.A.C. 6A:17-4.5 Transportation**

Proposed N.J.A.C. 6A:17-4.5(a) will require school districts to collaborate with local DCP&P offices to establish and implement clear written procedures regarding how transportation will be provided and arranged for the child's duration of time in resource family care and to ensure that children in resource family care will promptly receive transportation in a cost-effective manner, in accordance with the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, and N.J.A.C. 6A:27-6.4.

Proposed N.J.A.C. 6A:17-4.5(b) states the school district of residence is responsible for the cost of the transportation, pursuant to N.J.A.C. 6A:27-6.4.

The proposed section is consistent with the requirements of ESSA Section 1112(c)(5)(B)(i).

### **N.J.A.C. 6A:17-4.6 Tuition**

The proposed section will require the school district of residence to pay tuition to the school district in which the child is enrolled when a child in resource family care is enrolled in a school district other than the school district of residence. If the State has assumed financial responsibility for the tuition of a child in resource family care in accordance with N.J.S.A. 18A:7B-12.d, the proposed section states the State shall pay the costs of tuition for the child to attend school in the school district of enrollment in accordance with N.J.S.A. 18A:7B-12. The proposed section is consistent with the tuition requirements under N.J.S.A. 18A:7B-12.

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 rules proposed for readoption with amendments and new rules apply to the provision of educational services to homeless children and youths and to students placed in State facilities or in resource family care. The rules proposed for readoption with amendments and new rules set forth the responsibilities of district boards of education to ensure policies and procedures are in

place to guarantee that children and youths experiencing homelessness and students placed in State facilities or in resource family care receive a thorough and efficient education. The rules proposed for readoption with amendments and new rules also govern the provision of related programs and services, as well as the dispute resolution procedures for determining eligibility for services.

The rules proposed for readoption with amendments and new rules provide homeless children and youths, and students placed in State facilities or in resource family care, parents, school district officials, and the public with concise rules governing the provision of related programs and services for homeless children and youths, and for students placed in State facilities or in resource family care.

The rules proposed for readoption with amendments and new rules also enhance learning opportunities for homeless children and youths and for students placed in State facilities or in resource family care through guaranteed procedural protections. The rules proposed for readoption with amendments and new rules will provide better educational outcomes and improved instructional services for homeless children and youths and for students placed in State facilities or in resource family care.

### **Economic Impact**

The rules proposed for readoption with amendments and new rules will have a positive economic impact on homeless children and youths and on students placed in State facilities or in resource family care by better preparing them for postsecondary education and the demands of the 21st century workplace. The rules proposed for readoption with amendments and new rules also have the potential to significantly reduce future unemployment and increase long-term financial security for homeless children and youths and for students placed in in State facilities or in resource family care in New Jersey.

The Department does not anticipate the proposed amendments and new rules will involve increased expenditures for district boards of education, school leaders, educators, or other providers since all publicly funded education programs in New Jersey currently are required to provide a thorough and efficient education to all students. Moreover, the proposed amendments and new rules do not change the responsibilities of district boards of education and school leaders in ensuring the provision of a thorough and efficient education to homeless children and youths, students placed in State facilities or in resource family care.

Finally, the Department does not anticipate that the proposed amendments and new rules will have an additional economic impact on the Department or other State agencies.

### **Federal Standards Statement**

The rules proposed for readoption with amendments and new rules are in compliance with, and do not exceed, Federal education requirements included in the ESSA, 20 U.S.C. §6301, and its implementing regulations. The rules proposed for readoption with amendments and new rules will continue to advance the mission to ensure the provision of providing related programs and services to homeless children and youths and to students placed in State facilities or in resource family care. There are no other Federal requirements that impact the rules proposed for readoption with amendments and new rules.

## **Jobs Impact**

The Department does not anticipate the rules proposed for readoption with amendments and new rules will result in the generation or loss of jobs.

## **Agriculture Industry Impact**

The rules proposed for readoption with amendments and new rules will have no impact on the agriculture industry in New Jersey because the rules proposed for readoption with amendments and new rules concern the provision of related programs and services for homeless children and youths and students placed in State facilities or in resource family care.

## **Regulatory Flexibility Analysis**

The rules proposed for readoption with amendments and new rules apply to all providers of publicly funded elementary, secondary, and adult high school education programs, including approved private schools for students with disabilities (APSSDs). APSSDs are entities approved by the Department according to N.J.A.C. 6A:14-7.2 or 7.3 to provide special education and related services to students with disabilities placed by the district board of education responsible for providing the students' education. There are approximately 160 APSSDs in New Jersey and most APSSDs could be considered small businesses as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules proposed for readoption with amendments and new rules are largely procedural and programmatic, based on the enactment of ESSA and State law, and must be in place for homeless children and youths and students placed in State facilities or in resource family care. It would be disadvantageous to homeless children and youths, students placed in State facilities or in resource family care, and the public if all providers did not follow the requirements. There are no capital costs and minimal or no compliance costs associated with the rules proposed for readoption with amendments and new rules. The proposed amendments clarify the existing reporting requirements that APSSDs must follow, such as maintenance and transfer of records, but the proposed amendments do not pose any additional requirements on APSSDs.

## **Housing Affordability Impact Analysis**

The proposed rules for readoption with amendments and new rules will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the proposed rules for readoption with amendments and new rules will evoke a change in the average costs associated with housing because the proposed rules for readoption with amendments concern the provision of related programs and services to homeless children and youths and to students placed in State facilities or in resource family care.

## **Smart Growth Development Impact Analysis**

The proposed rules for readoption with amendments and new rules will have an insignificant impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments 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 proposed for readoption amendments and new rules concern the provision of related programs and services to homeless children and youths and to students placed in State facilities or in resource family care.

## **Racial and Ethnic Community Criminal Justice and Public Safety Impact**

There is an extreme unlikelihood the proposed rules for re-adoption 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 proposed amendments concern the provision of education-related programs and services to homeless children and youths and to students placed in State facilities or in resource family care.

**Full text** of the rules proposed for re-adoption and the proposed amendments and new rules follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]).

Chapter 17, Education for Homeless Children **and Youths** and Students in State Facilities **and**

**Educational Stability for Children in Resource Family Care**

Subchapter 1. General Provisions

6A:17-1.1 Purpose

This chapter is adopted to ensure homeless children [and] **and youths**, students placed in State facilities, **and children in resource family care** are provided a thorough and efficient education. This chapter establishes uniform Statewide policies and procedures to ensure the enrollment of homeless children **and youths** and to respond to appeals made by parents or other parties related to the enrollment of homeless children **and youths**. The chapter also identifies general program requirements related to the operation, administration, and approval of educational programs in State facilities. **The chapter further establishes policies and procedures to ensure the educational stability of children in resource family care.**

6A:17-1.2 Definitions

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

**“Best interest determination” means the school placement decision made by DCP&P based on the factors considered as set forth at N.J.S.A. 30:4C-26b.**

“Career and technical education” or “CTE” means as defined in N.J.A.C. 6A:19-1.2.

**“DCP&P” means the Division of Child Protection and Permanency, which is a division in the New Jersey Department of Children and Families (DCF) that is responsible for the placement of children in resource family care, pursuant to N.J.S.A. 30:4C-26b .**

**“Educational Stability School District Notification” means the notification provided by DCP&P to the school district, pursuant to N.J.S.A. 30:4C-26b.h.**

“Enroll” or “enrollment” means attending classes and participating fully in school activities.

“Homeless child” means a child or youth who lacks a fixed, regular, and adequate residence, pursuant to N.J.S.A. 18A:7B-12 and N.J.A.C. 6A:17-2.2.

“Immediate” or “immediately” means at the instant the need for placement is made known.

“Parent” means the natural or adoptive parent, legal guardian, [foster] **resource family care** parent, surrogate parent, or person acting in the place of a parent such as the person with whom the child legally resides or a person legally responsible for the child’s welfare.

**“Point of contact” means the employee identified in each school district who facilitates all activities needed to ensure enrollment and attendance of children in resource family care.**

**“Resource family care” means 24-hour substitute care for children placed away from their parent(s) or guardian(s) and for whom DCP&P has placement and care responsibility. The term is synonymous with “foster care” as defined in the Federal Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), and includes “resource family home” found elsewhere in the New Jersey Administrative Code and in the New Jersey Statutes Annotated.**

“School district liaison for the education of homeless children **and youths**” means the person identified in each school district who facilitates all activities needed to ensure the enrollment and attendance of homeless children **and youths**.

“School district of residence” for a homeless child **or youth** means the school district in which the parent [or guardian] of a homeless child **or youth** resided prior to becoming homeless. It may not be the school district in which the student currently resides. This **term** is synonymous with

[the term] “school district of origin” referenced in the McKinney-Vento Homeless Education Assistance Act. “School district of residence” for a student in a State facility means the school district in which the parent [or guardian] with whom the student lived prior to placement in a State facility currently resides, pursuant to N.J.S.A. 18A:7B-12.b. **In the case of a child placed in resource family care prior to September 9, 2010, in accordance with P.L. 2010, c. 69, the “school district of residence” means the school district in which the resource family care parent(s) resides. In the case of a child placed in resource family care on or after September 9, 2010, in accordance with P.L. 2010, c. 69, the “school district of residence” means the present school district of residence of the parent(s) with whom the child lived prior to the most recent placement in resource family care.**

**“School of origin” for a child in resource family care means the school district in which a child was enrolled prior to a change in the child’s care, custody, or guardianship. If a child's resource family care placement changes, the school of origin would then be considered the school district in which the child is enrolled at the time of the placement change.**

“State agency” means the New Jersey Department of Human Services, the New Jersey Department of Corrections, the New Jersey Department of Children and Families, or the New Jersey Juvenile Justice Commission.

“State facility” means residential and day programs operated by, contracted with, or specified by the New Jersey Department of Human Services, the New Jersey Department of Corrections, the New Jersey Department of Children and Families, or the New Jersey Juvenile Justice Commission.

“Transitional living facility” means a temporary facility that provides housing to a child due to domestic violence, pursuant to [P.L. 2012, c. 80 (N.J.S.A. 18A:7B-12.1)].

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

## Subchapter 2. Education of Homeless Children **and Youths**

### 6A:17-2.1 Scope

This subchapter shall apply to district boards of education providing general education services to students in preschool through grade 12 and special education services to students ages three through 21. Nothing in this subchapter shall limit the educational rights of homeless children **and youths** or school district responsibilities under Subtitle VII-B of the [Stewart B.] McKinney-Vento Homeless Assistance Act (42 U.S.C. §§ 11431 et seq.).

### 6A:17-2.2 Determination of homeless status

(a) [A] **The** district board of education **for the school district of residence** shall determine that a child **or youth** is homeless for purposes of this subchapter when [he or she] **the child** resides in any of the following:

1. A publicly or privately operated shelter designed to provide temporary living accommodations, including:
  - i. Hotels or motels;
  - ii. Congregate shelters, including domestic violence and runaway shelters;
  - iii. Transitional housing; and
  - iv. Homes for adolescent mothers;
2. A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation, including:
  - i. Cars or other vehicles, including mobile homes;
  - ii. Tents or other temporary shelters;
  - iii. Parks;

- iv. Abandoned buildings;
  - v. Bus or train stations; or
  - vi. Temporary shelters provided to migrant workers and their children on farm sites;
3. The residence of relatives or friends where the homeless child **or youth** resides out of necessity because [his] **the child's** or [her] **youth's** family lacks a regular or permanent residence of its own; **or**
  4. Substandard housing[; or].
  - [5. Any temporary location wherein children and youth are awaiting foster care placement.]

6A:17-2.3 Responsibilities of the school district of residence

- (a) The school district of residence for a homeless child **or youth** shall be responsible for the education of the child and shall:
  1. Determine the school district in which the child shall be enrolled after consulting with the parent pursuant to N.J.A.C. 6A:17-2.5;
  2. Pay the cost of tuition pursuant to N.J.S.A. 18A:38-19[,] when the child attends school in another school district; and
  3. Provide for transportation for the child pursuant to N.J.A.C. 6A:27-6.2.
- (b) The determination of a homeless child's school district of residence shall be made by the chief school administrator of the school district of residence, **or the chief school administrator's** designee, pursuant to N.J.A.C. 6A:17-2.4 based upon information received from the parent, [the Department of Human Services or the Department of Children and Families,] a shelter provider, another school district, **or** an involved agency[, or a case manager].

- (c) The district [board of education] identified in accordance with N.J.S.A. 18A:7B-12 as the school district of residence for a homeless child **or youth** shall be the school district of residence until the parent establishes a permanent residence. Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1.d.

6A:17-2.4 Designation of school district liaisons and their responsibilities

- (a) The chief school administrator of each school district shall identify a school district liaison for the education of homeless children **and youths**. The school district liaison shall:
1. Facilitate communication and cooperation between the school district of residence and the school district where the homeless child **or youth** resides;
  2. Develop procedures to ensure a homeless child **or youth** residing in the school district is enrolled and attending school pursuant to N.J.A.C. 6A:17-2.5;
  3. Ensure homeless families, children, and youth receive educational services for which they are eligible, including Head Start [and Even Start] programs, preschool programs administered by the [local] **district board of education** [agency], and referrals to health care, dental, mental health, and other appropriate services;
  4. Inform parents [and guardians] of homeless children and **youths** of the educational and related opportunities available to their children and ensure that [they] **parents** are provided with meaningful opportunities to participate in the education of their children;
  5. Ensure that public notice of the educational rights of homeless children and **youths** is disseminated where such children receive services, such as schools, family shelters, and soup kitchens;

6. Ensure enrollment disputes are resolved pursuant to N.J.A.C. 6A:17-2.7;
  7. Ensure the parent [or guardian] of a homeless child or youth, or any unaccompanied youth, is fully informed of all transportation services, including transportation to the school district of residence, and is assisted in accessing transportation to the school selected [under] **pursuant to** N.J.A.C. 6A:17-2.5;
  8. Assist the parent [or guardian] to obtain the homeless child or youth's medical records or required immunizations; and
  9. Assist an unaccompanied youth to ensure [he or she] **the youth** is enrolled and is receiving all services pursuant to this section.
- (b) When a homeless child **or youth** resides in a school district, the school district liaison shall notify the liaison of the school district of residence within 24 hours of receiving notification from the parent, [the Department of Human Services or the Department of Children and Families,] a shelter director, **or** an involved agency[, or a case manager].
- (c) Upon notification of the need for enrollment of a homeless child **or youth**, the liaison in the school district of residence shall coordinate enrollment procedures immediately based upon the best interest of the child pursuant to N.J.A.C. 6A:17-2.5(b).

#### 6A:17-2.5 School district enrollment

- (a) The chief school administrator of the school district of residence, or **the chief school administrator's** designee, shall decide in which school district the homeless child **or youth** shall be enrolled as follows:
1. Enroll the homeless child **or youth** in the school district of residence to the extent feasible, except when doing so is contrary to the wishes of the homeless child's parent or guardian;
  2. Continue the homeless child's **or youth's** education in the school district of last attendance if it is not the school district of residence; or

3. Enroll the homeless child or youth in the school district where the child resides.
- (b) The chief school administrator of the school district of residence, or **the chief school administrator's** designee, shall decide the school district of enrollment of a homeless child based on what is determined to be in the best interest of the child after considering:
1. The enrollment of the homeless child **or youth** in the school district of residence to the extent feasible, except when doing so is contrary to the wishes of the child's parent [or guardian];
  2. The continuity of the child's educational program;
  3. The eligibility of the child for special instructional programs, including, but not limited to, bilingual, gifted and talented, special education, early childhood, and career and technical education programs; and
  4. The distance, travel time, and safety factors in coordinating transportation services from the residence to the school.
- (c) The chief school administrator of the school district of residence, or **the chief school administrator's** designee, shall determine the child's school district **of** enrollment immediately after consultation with the parent. The school district of residence shall adhere to the following procedures:
1. Enrollment decisions shall be made immediately upon notification of the need for enrollment. When the decision is made, the child shall be enrolled immediately. If a dispute arises regarding enrollment of a homeless child **or youth**, the homeless child **or youth** shall be immediately enrolled in the school district in which enrollment is sought by the parent or guardian, pending resolution of the dispute pursuant to N.J.A.C. 6A:17-2.7.
  2. Consultation with the parent regarding the enrollment decision and the right to appeal that decision shall be documented in writing.

3. A decision to enroll a homeless child **or youth** in a school district other than the school district of residence or the school district requested by the parent or guardian shall be explained in writing and provided to the parent or guardian.
- (d) When a decision is made to enroll the child in a school district other than the school district of residence, the chief school administrator [or designee] of the school district of residence **or the chief school administrator's designee** shall forward to the new school district all relevant school and health records, consistent with the provisions of N.J.A.C. 6A:32[, School District Operations]-7.
- (e) When a homeless child **or youth** with a disability is enrolled in a school district other than the school district of residence, the school district of enrollment shall treat the student as a transfer student pursuant to N.J.A.C. 6A:14, Special Education.
- (f) When the school district of residence for a homeless child **or youth** cannot be determined, the chief school administrator [or designee] of the school district in which the child currently resides, **or the chief school administrator's designee**, shall enroll the child immediately in the school district of the current residence or the school district of last attendance.
- (g) The school district selected pursuant to this subchapter shall immediately enroll the homeless child or youth, even if [he] **the child** or [she] **youth** is unable to produce records normally required for enrollment, such as previous academic records, medical records, proof of residency, or other documentation.
- (h) Enrollment in the school district of residence[.]; **enrollment in** the school district of last attendance, if not the school district of residence[.]; or **enrollment in** the school district where the child **or youth** resides shall continue for the duration of homelessness, including when a family becomes homeless between academic years, and also for the remainder of the academic year if the homeless child **or youth** becomes permanently housed during the academic year.

#### 6A:17-2.6 Parental rights

Unless parental rights have been terminated by a court of competent jurisdiction, the parent retains all rights under this subchapter.

#### 6A:17-2.7 Disputes and appeals

- (a) When a dispute occurs regarding the determination of homelessness or the determination of the school district of enrollment made by the school district of residence, the chief school administrator(s) or designee(s) of the involved school district(s) or the child's parent(s) shall immediately notify the executive county superintendent[, who, in]. **In** consultation with the Department's McKinney-Vento Homeless Education Coordinator or [his or her] **the coordinator's** designee, [immediately] **the executive county superintendent** shall decide the child's status **within five business days of receipt of the dispute**. If a dispute remains between the parent and the involved school district(s) following the executive county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner for determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.
- (b) When a school district designated as the school district of residence disputes its designation as the school district of residence, or where no designation can be agreed upon by the involved school districts, the chief school administrator(s) or designee(s) of the involved school districts shall immediately notify the executive county superintendent[, who]. **The executive county superintendent** shall make a determination [immediately, if possible, but no later than] within [48 hours] **five business days of receipt of the dispute and, when necessary, in consultation with the Department's Homeless Coordinator**.
1. If the dispute regarding determination of **the school** district of residence does not involve the determination of homelessness and/or **school** district of enrollment,

the school district disputing the executive county superintendent's determination may appeal to the Department pursuant to N.J.A.C. 6A:23A-19.2(d), (e), and (f), and request a determination from the Division of [Administration and] Finance.

2. If an appeal of a determination of **the school** district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.
- (c) Any dispute or appeal shall not delay the homeless child's **or youth's** immediate enrollment or continued enrollment in the school district. The homeless child **or youth** shall be enrolled in the school district in which enrollment or continued enrollment is sought by the parent or guardian, pending resolution of the dispute or appeal.
- (d) Disputes and appeals involving the services provided to a homeless child **or youth** with a disability shall be made pursuant to N.J.A.C. 6A:14.

#### 6A:17-2.8 Tuition

- (a) When the homeless child **or youth** is enrolled in a school district other than the school district of residence, the school district of residence shall pay to the school district of enrollment the tuition costs pursuant to N.J.S.A. 18A:38-19 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence **or the school district in which the parent has been deemed domiciled** shall [no longer] pay tuition to the school district of enrollment.
- (b) The school district of residence shall list the child on its annual Application for State School Aid (ASSA) pursuant to N.J.S.A. 18A:7F-33 until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A.

18A:38-1.d. At that time, the school district of residence **or the school district in which the parent has been deemed domiciled** shall [no longer] list the student on its ASSA.

(c) The State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12.1 and shall pay the tuition to the school district in which the child is currently enrolled until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d, under the following circumstances:

1. If the school district of residence cannot be determined for the homeless child **or youth**;
2. If the school district of residence is outside of the State; or
3. If a child resides in a [Department of Community Affairs-licensed emergency] **domestic violence** shelter, **homeless shelter**, or transitional living facility [due to domestic violence] **located in a school district other than the school district of residence** for more than a year [combined for the duration of] **during** the placement, pursuant to P.L. 2012, c. 80 (N.J.S.A. 18A:7B-12.d **and 12.1**).

[i.] **(d)** When the State assumes fiscal responsibility for the tuition of a homeless child **or youth under the circumstances at (c) above**, the State shall pay to the school district in which the child is enrolled the weighted base per pupil amount calculated pursuant to N.J.S.A. 18A:7F-49 and the appropriate security and special education categorical aids per pupil pursuant to N.J.S.A. 18A:7F-55 and 56.

### Subchapter 3. Educational Programs for Students in State Facilities

#### 6A:17-3.1 Scope

This subchapter shall apply to all educational programs provided by the Department of Corrections, the Department of Children and Families, [the Department of Human Services,] and the Juvenile Justice Commission in accordance with N.J.S.A. 18A:7B-1 et seq. Educational

programs and services shall be provided to students in State facilities ages five through 20 and for students with disabilities ages three through 21 who do not hold a high school diploma.

#### 6A:17-3.2 Educational program objectives and requirements

- (a) Each State agency shall develop educational programs to complement the agency's primary mission and provide educational opportunities that meet the identified needs of students in each State facility. The programs shall be delivered, in accordance with N.J.A.C. 6A:8-5.1, through traditional strategies or a variety of individualized learning opportunities, which allow high school credit to be granted through alternative learning experiences, in accordance with program completion authorized in N.J.A.C. 6A:8-5.1(a)2.
1. Upon a student's placement in the State facility, the State agency shall:
    - i. Provide a program comparable to the [special education student's] **student with a disability's** current individualized education program (IEP), pursuant to N.J.A.C. 6A:14-4.1(g), and implement the current IEP or develop a new IEP pursuant to N.J.A.C. 6A:14-4.1(g)1 through 3. When a [special education] student **with a disability** is placed by a school district on a tuition basis, the school district of residence shall be responsible for the development of the student's IEP;
    - ii. Develop an individualized program plan (IPP), within 30 calendar days, for each general education student, in consultation with the student's parent, school district of residence, and a team of professionals with knowledge of the student's educational, behavioral, emotional, social, and health needs to identify appropriate instructional and support services. The IPP shall minimally include the following information for the student:
      - (1) NJSMART number and personally identifiable information;

- (2) Current academic standing on the date of development;
- (3) Results of educational screening administered by the State agency;
- (4) Specific curriculum areas and course titles designed to meet all of the New Jersey Student Learning Standards;
- (5) Graduation requirements of the school district of residence, for students in grades nine through 12; and
- (6) Services to facilitate the transition of a student returning to the general education program.

iii. Discuss the IPP with the student and make a reasonable effort to obtain parental consent for an initial IPP, including written notice.

- (1) The State facility shall provide written notice to the parent, with a copy of the IPP, that requests the parent's consent but clearly indicates the IPP will be implemented if consent is not received within 15 days of receipt of the notice.
- (2) Parental consent need not be obtained for an initial IPP if the parent cannot be found or does not respond after reasonable efforts, or parental rights have been terminated or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed.
- (3) The State facility shall document it is unable to secure the participation of the parent by maintaining a record of its attempts to arrange for the parental consent of the IPP, including, but not limited to:
  - (A) Detailed records of telephone calls made or attempted and the results of the calls; and

(B) Copies of correspondence sent to the parents and any response(s) received; and

iv. Review and revise the IPP at any time during the student's enrollment, as needed, or on an annual basis if the student remains enrolled in the State facility educational program, in consultation with the school district of residence.

(1) The parent shall be advised in writing of any revision(s) to the IPP.

(b) Each State agency shall utilize the following program objectives for achieving the legislative goal as stated in N.J.S.A. 18A:7B-1 et seq., of providing a thorough and efficient education and as the framework for developing educational experiences that meet the specialized needs of all students in each State facility under the agency's jurisdiction. The educational programs as provided for under the State Facilities Education Act shall:

1. Provide instruction in the New Jersey Student Learning Standards and assist students in working toward fulfilling the high school graduation requirements contained in N.J.A.C. 6A:8-5.1;
2. Provide relevant job training and enhance occupational competencies through career and technical education programs, where appropriate, pursuant to N.J.A.C. 6A:19, Career and Technical Education Programs and Standards, and N.J.A.C. 6A:8, Standards and Assessments;
3. As appropriate, provide adult education programs and post-secondary and college programs offered by institutions licensed by the Department of Education or the Office of the Secretary of Higher Education in programs operated by the [State] Departments of Corrections[,], **and** Children and Families, [and Human Services,] pursuant to N.J.S.A. 18A:7B-4, 8, and 9; and

4. As appropriate, provide an educational program preparing students for the adult education assessment, pursuant to N.J.A.C. 6A:20-1.2, for programs operated by the Juvenile Justice Commission and the Departments of Corrections and Children and Families.
- (c) Attendance in educational programs is compulsory for all students, except for a student age 16 or above who may explicitly waive this right. For a student between the ages 16 and 18, a waiver is not effective unless accompanied by consent from a student's parent or guardian. A waiver may be revoked at any time by the former student.
  - (d) All education programs, with the exception of instruction provided pursuant to (f) below, shall be available at least four hours per day, five days a week, for a minimum of 220 days each year.
  - (e) The actual number of days a student with a disability must attend the educational program shall be determined by the student's IEP in accordance with N.J.A.C. 6A:14-3.7.
  - (f) Each State agency shall ensure that instruction is provided to students further confined due to a health condition, treatment, or behavioral segregation:
    1. The teacher shall provide instruction for the number of days and length of time sufficient to continue the student's academic progress and dependent upon the student's ability to participate due to a temporary or chronic health condition or a need for treatment that precludes participation in the usual education setting or as determined by custody for behavioral segregation.
    2. For a student with disabilities, the academic instruction shall be consistent with the student's IEP, pursuant to N.J.A.C. 6A:14-2.8, and shall meet the New Jersey Student Learning Standards. When the provision of academic instruction will exceed 30 consecutive school days, the IEP team shall convene a meeting to review and, if appropriate, revise the student's IEP.

3. For a general education student, the instruction shall be consistent with the student's individualized program plan and shall meet the New Jersey Student Learning Standards and the requirements of the district board of education for promotion at that grade level.
- (g) Each State agency shall ensure that activities are not scheduled in conflict with educational programs.
- (h) Each State agency shall ensure students are not excused from attending educational programs, except for reasons of illness, religious observance, court appearance, or other compelling personal circumstances.
- (i) Each State agency shall ensure all students in that agency's State facilities shall comply with the State agency's established code of conduct.
- (j) Each State agency shall establish procedures for continued education in a different setting in cases where a student is guilty of ongoing defiance of the rules, and the student's continued participation in the program is disruptive to the ongoing educational process.
- (k) For a student in a State facility who has an identifiable school district of residence as defined by N.J.S.A. 18A:7B-12, the district board of education shall grant a State-endorsed diploma in accordance with N.J.A.C. 6A:8-5.1 and 5.2 and 6A:14-4.11.
- (l) For a student in a State facility who does not have an identifiable school district of residence as defined by N.J.S.A. 18A:7B-12, the applicable State agency shall certify the student has successfully completed all graduation requirements contained in N.J.A.C. 6A:8-5.1 so the Commissioner of Education may issue a State-endorsed diploma.

#### 6A:17-3.3 Students with a disability

Each State agency shall ensure all students with a disability in the agency's State facilities are provided a free and appropriate public education as set forth under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq., and shall provide special education and

related services as stipulated in the individualized education program (IEP) in accordance with the rules governing special education at N.J.A.C. 6A:14.

#### 6A:17-3.4 Staffing and class size

- (a) Each State agency, either independently or through contractual agreements, shall employ the educational personnel required to ensure the provision of programs and services pursuant to this subchapter.
  - 1. To maintain program operations during temporary educational personnel absences and to enable students to fulfill credit and graduation requirements, the State agency shall ensure appropriately certified substitute teachers for academic and career and technical education programs are available.
  - 2. Substitute teachers in State facilities shall adhere to the requirements [pursuant to] **at** N.J.A.C. 6A:9B-[6.5]7.
- (b) The Office of Education in each State agency shall ensure all educational personnel possess the appropriate certification endorsement issued by the State Board of Examiners pursuant to N.J.S.A. 18A:6-38.
- (c) Each State agency shall maintain the certification for all educational staff on file at the respective Office of Education and at the appropriate program site.
- (d) The Office of Education in each State agency shall prepare and make available a plan for the required professional development for all teachers and educational services personnel employed by that State agency consistent with the requirements of N.J.A.C. 6A:9C[-3 and 6A:9B-14], **Professional Development**.
- (e) Each State agency shall ensure the provision of classes for general education students that shall not exceed 12 students.
  - 1. A State agency may request exceptions to this requirement as part of the annual approval process required by N.J.A.C. 6A:17-3.7(c).

2. The Department of Education shall grant exceptions on a case-by-case basis when the requested exception does the following:
  - i. Justifies the need for an alternate program structure;
  - ii. Demonstrates the specialized needs of the students served will continue to be met; and
  - iii. Ensures the necessary supervision, security, and safety of the students served.
- (f) The class size of special education programs serving solely students with disabilities shall be in accordance with N.J.A.C. 6A:14-4.7.

#### 6A:17-3.5 Facilities

- (a) Each State agency shall ensure all buildings and facilities used for educational programs comply with the provisions of N.J.A.C. 6A:26, Educational Facilities, where applicable.
- (b) Each State agency shall ensure all educational programs are provided in locations separate from sleeping areas, except where appropriate for safety or medical reasons.

#### 6A:17-3.6 Student records and reports

- (a) Within 10 school days of receipt of a request for a copy of the student's educational records by a State facility, the school district receiving the request shall provide the State facility with the student's educational records and other relevant school district information to assist the transition, including, but not limited to, the following:
  1. State identification number in NJSMART;
  2. The most recent report card;
  3. Transcripts school district's graduation requirements for students in grades nine through 12;
  4. Attendance standards;

5. The name of a contact person;
  6. For students with disabilities, the name of a special education contact person;
  7. Statewide assessment results;
  8. Other assessment results, if available;
  9. Health records, including immunizations pursuant to N.J.A.C. 6A:16-2.4(d);
  10. Photocopy of the permanent record card pursuant to N.J.A.C. 6A:32-7.5(e)5; and
  11. The most current eligibility conference report, IEP, and child study team assessments for [special education] students **with disabilities**.
- (b) Each State agency shall maintain student records in accordance with N.J.A.C. 6A:32-7. All educational records shall be kept in files separate from court and other non-educational records required to be safeguarded from public inspection pursuant to N.J.S.A. 2A:4A-60.
- (c) Each State agency shall ensure the school district of residence is notified of their students' progress toward meeting local and State high school graduation requirements, pursuant to N.J.A.C. 6A:8-5.1, at the marking period intervals established in the agency's school calendar.
- (d) To ensure full and appropriate credit for a program of study completed by a student, each State agency shall transfer educational records and a final progress report for each student exiting a State facility to the school district identified upon discharge, or if none is identified, the school district of residence, as appropriate, within 10 school days of the student's exit. The report shall include a designated contact person and the following information, which is necessary to formulate an appropriate educational program and to ensure credit for work completed is granted:
1. Statewide assessment and diagnostic findings;
  2. Credit earned toward high school graduation requirements, pursuant to N.J.A.C. 6A:8-5.1;

3. Grade level equivalent;
  4. Vocational training experience, including any credential, certification, or license earned, and recognized career and technical education end-of-program technical skills assessment or industry certification tests results; and
  5. Individualized program plan or individualized education program for students with a disability.
- (e) The student's school district of residence shall grant academic credit based on the appropriate documentation provided by the State agency for the program of study successfully completed in a State facility, pursuant to N.J.S.A. 18A:7B-8 and 9 and N.J.A.C. 6A:8-5.1(a)1 through 6.
- (f) The student's school district of residence may contact the director of the appropriate State agency Office of Education to dispute any academic credit recommendation.

#### 6A:17-3.7 Approval process for funding

- (a) The approval and funding of educational programs shall be in accordance with N.J.S.A. 18A:7B-2 of the State Facilities Education Act of 1979, and N.J.S.A. 18A:7F-43 et seq., or other applicable law.
- (b) Each State agency shall submit annually to the Department of Education, the resident enrollment of students in the agency's State facility education programs on the last school day prior to October 16 of the prebudget year, pursuant to N.J.S.A. 18A:7B-2.
- (c) By December 15 of each prebudget year, pursuant to N.J.S.A. 18A:7F-24, each State agency shall submit to the Department of Education, an application that includes a detailed education program plan and budget for approval of all programs and services under its jurisdiction. The plan shall include, at a minimum, a program description; staffing patterns; facility-level budget information; signed statement of assurance; program narrative; and contracted services.

- (d) Prior to March 1 of the prebudget year, the Commissioner of Education shall notify the commissioner or the executive director of each State agency of the entitlement for educational programs for the following fiscal year.
- (e) The entitlement shall be forwarded to each State agency in two payments: 90 percent after July 1 and 10 percent after April 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the commissioner or the executive director of each State agency. The payments may be withheld pursuant to N.J.S.A. 18A:7B-5 and 18A:7F-43 et seq.
- (f) Each State agency shall use the entitlement to support its educational programs in accordance with the provisions of N.J.S.A. 18A:7B-4 and requirements established in this subchapter.
- (g) Each State agency shall submit to the Commissioner of Education requests for revisions to the approved education program plan and budget. The following revisions shall require written approval from the Department of Education before implementation:
  - 1. Budget category expenditure variances that exceed \$10,000 or 10 percent of the approved amount in any budget line;
  - 2. Any addition or deletion to approved contracts for services;
  - 3. Any addition, deletion, or substitution of approved amounts for the purchase of instructional or non-instructional equipment; and
  - 4. Any substantive addition or deletion in educational programs.
- (h) Each revision under (g) above shall be fully documented and contain a certification from the Office of Education in the State agency and its commissioner or executive director, that the revision is essential to the education program.
- (i) The expenditure of funds shall be available for audit by the Department of Education and fully documented in the following manner:

1. Salary expenditures shall be supported by time and activity reports for each budgeted position, supplemented with a current job description;
  2. All non-salary expenditures shall be supported by a vendor's invoice, a verification of receipt, and evidence the service or supply is utilized at the program level; and
  3. All documentation shall be retained for audit for a minimum of five years after the completion of the fiscal year. If an audit has been started or notice received of an audit to be started all supporting documentation shall be retained until the audit process is concluded.
- (j) The Department of Education shall review all educational programs provided by each State agency for compliance with the rules established in this subchapter and adherence to the approved education program plan and budget, pursuant to N.J.S.A. 18A:7B-5.

#### **Subchapter 4. Educational Stability for Children in Resource Family Care**

##### **6A:17-4.1 Purpose and scope**

- (a) **The purpose of this subchapter is to ensure children placed in resource family care are provided a thorough and efficient education and, thereby, to improve their educational outcomes. As such, this subchapter establishes uniform Statewide policies and procedures to ensure the Department of Education and school districts work in collaboration with DCP&P to provide for the educational stability of children placed in resource family care.**
- (b) **Nothing in this subchapter shall limit the educational rights and educational stability of children placed in resource family care or the responsibilities of school districts under the Every Student Succeeds Act (ESSA) Section 1111(g)(1)(E), including the following circumstances: a child in resource family care placement remains in the child's current school district unless a determination has been made**

that remaining in the current school district is not in the child's best interest, pursuant to N.J.S.A. 30:4C-26b; immediate enrollment and records transfer take place; and a point of contact is designated.

#### **6A:17-4.2 School district responsibilities**

- (a) Each district board of education shall:
1. Identify a point of contact;
  2. Develop policies and procedures to ensure the following for children in resource family care:
    - i. Local transportation, in accordance with N.J.A.C. 6A:17-4.5;
    - ii. Immediate enrollment upon receipt of an Educational Stability School District Notification from DCP&P and in accordance with N.J.A.C. 6A:17-4.4(a);
    - iii. Immediate record transfer upon receipt of an Educational Stability School District Notification from DCP&P and in accordance with N.J.A.C. 6A:17-4.4(b); and
    - iv. Continued enrollment for the duration of placement in resource family care and a determination of whether children who are reunited with their parent(s) during the academic year can continue enrollment in the school district, in accordance with ESSA Section 1112(c)(5) and N.J.A.C. 6A:17-2.5(h).

#### **6A:17-4.3 Point of contact role and responsibilities**

- (a) Upon receipt of an Educational Stability School District Notification from DCP&P, the point of contact shall:

- 1. Ensure the child in resource family care is immediately enrolled in, and regularly attends, school;**
  - 2. Implement the local transportation procedures for the child in resource family care;**
  - 3. Facilitate the transfer of records;**
  - 4. Facilitate data sharing with DCP&P, consistent with the Family Educational Rights and Privacy Act (FERPA) and other privacy protocols;**
  - 5. Provide DCP&P the information relevant to assisting with best interest determinations, in accordance with the process set forth at N.J.S.A. 30:4C-26b;**
- (b) The point of contact shall provide to school district staff professional development and training on how to ensure the educational stability of children in resource family care.**

**6A:17-4.4 Immediate enrollment and records transfer**

- (a) When DCP&P makes a best interest determination that remaining in the current school district is not in the best interest of a child in resource family care, the school district as determined by DCP&P shall immediately enroll the child, even if the required documentation is not available for the child.**
- (b) The school district in which the child is enrolled shall immediately contact the child's school of origin to obtain all relevant academic records and pertinent documentation.**
- (c) Enrollment in the school district according to DCP&P's best interest determination shall continue for the duration of the child's time in resource family care. If the child reunites with the child's parent(s) or guardian(s) during the academic year, enrollment in the school district according to DCP&P's best interest determination**

may continue for the remainder of the academic year, upon request of the parent(s) or guardian(s).

#### **6A:17-4.5 Transportation**

- (a) To facilitate transportation for children in resource family care, all school districts shall collaborate with local DCP&P offices to:
1. Establish and implement clear written procedures regarding how transportation will be provided and arranged for the child's duration of time in resource family care; and
  2. Ensure that children in resource family care will promptly receive transportation in a cost-effective manner, in accordance with the Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, and N.J.A.C. 6A:27-6.4.
- (b) The school district of residence shall be responsible for the cost of the transportation, pursuant to N.J.A.C. 6A:27-6.4.

#### **6A:17-4.6 Tuition**

When a child in resource family care is enrolled in a school district other than the school district of residence, the school district of residence shall pay tuition to the school district in which the child is enrolled. If the State has assumed financial responsibility for the tuition of a child in resource family care in accordance with N.J.S.A. 18A:7B-12.d, the State shall pay the costs of tuition for the child to attend school in the school district of enrollment in accordance with N.J.S.A. 18A:7B-12.