

## **Proposed Notice of Substantial Changes Upon Adoption at N.J.A.C. 6A:32, School District Operations**

The following is the accessible version of the proposed notice of substantial changes upon adoption at N.J.A.C. 6A:32. The proposal level document includes two sections – [an explanation of the document](#) and [the summary of agency-initiated changes](#).



State of New Jersey  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

**Proposal Level**  
**January 5, 2022**

PHILIP D. MURPHY  
*Governor*

SHEILA Y. OLIVER  
*Lt. Governor*

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:32-5.1, 12.1, 13.1 and 13.2

Reason for Action: Notice of Proposed Substantial Changes

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: July 15, 2022

In May 2021, the Department of Education (Department) proposed to readopt N.J.A.C. 6A:32, School District Operations, with amendments and new rules. The rulemaking was approved by the State Board of Education at proposal level on July 14, 2021, and published in the New Jersey Register on August 16, 2021, at 53 N.J.R. 1307(a). The public comment period closed October 15, 2021.

The Department now proposes substantial changes to the proposed amendments and new rules without adopting any part of the original rulemaking at this time.

In response to comments received from the public, the Department is proposing amendments to terms used at N.J.A.C. 6A:32-12.1.

Additionally, the Department is proposing agency-initiated changes at N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2. The first change, at N.J.A.C. 6A:32-5.1(e), adds "Upon acquisition of a standard certificate," which was mistakenly omitted from the text of the rule proposal but is proposed for deletion. The Department also proposes new rules at N.J.A.C. 6A:32-13.1(c)3 and 13.2(b)3 to provide detail on the Commissioner-established criteria that district boards of education must use when creating their annual virtual or remote instruction plans and submitting them to the Commissioner for approval.

If approved by the State Board for publication in the New Jersey Register, only the new amendments being proposed in this notice will be subject to public comment for 60 days.

After the 60-day comment period is over, the Department plans to present to the State Board the readoption of N.J.A.C. 6A:32 at adoption level, which will include the combined amendments from the original proposal and the notice of substantial changes. The adoption also will include comments received regarding the original proposal, including comments not captured in the attached notice, as well as any comments received regarding the notice of proposed substantial changes, and the Department's responses to all comments.

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

**Topic:** School District Operations                      **Meeting Date:** January 5, 2022

**Code Citation:** N.J.A.C. 6A:32

**Level:** Proposal of Notice of Substantial Changes

**Division:** Field Support and Services                      **Completed by:** Division of Field Services

In May 2021, the Department of Education (Department) proposed to readopt N.J.A.C. 6A:32, School District Operations, with amendments and new rules. The rulemaking was approved by the State Board of Education at proposal level on July 14, 2021, and published in the New Jersey Register on August 16, 2021, at 53 N.J.R. 1307(a). The public comment period closed October 15, 2021.

The Department now proposes substantial changes to the proposed amendments and new rules without adopting any part of the original rulemaking at this time.

A summary of the comments received about only the rules proposed for amendment as part of the notice of substantial changes and the Department’s responses are provided below.

**Summary of Comments and Agency Responses:**

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

1. Melanie M. Schulz, Director of Government Relations  
New Jersey Association of School Administrators
2. Jennie Lamon, Assistant Director of Government Relations  
New Jersey Principals and Supervisors Association
3. Elisabeth Ginsburg, Executive Director  
Garden State Coalition of Schools
4. Michael Cohan, Director, Professional Development and Instructional Issues  
New Jersey Education Association
5. Martha O. DeBlieu, Associate Director, Education Research and Issues Analysis  
New Jersey Education Association

**1. Comment:** The commenters stated that “auxiliary teacher” at proposed N.J.A.C. 6A:32-12.1(c)1 is not defined and is unclear. The commenters recommend that the term be deleted. **(1 through 5)**

**Response:** The Department agrees with the commenters. Therefore, the Department proposes to delete “auxiliary teacher” at N.J.A.C. 6A:32-12.1(c)1. Please see Agency-initiated Change 2 for the proposed deletion and additional proposed amendments.

## Summary of Agency-initiated Changes

Full text of the regulations containing new proposed changes upon adoption follows (additions contained in the readoption with amendments indicated in boldface **thus** and deletions indicated in brackets [thus]; additions contained in this notice of substantial changes upon adoption indicated as **thus** and deletions indicated as [[thus]]):

1. The Department proposes at N.J.A.C. 6A:32-5.1(e) to delete “Upon acquisition of a standard certificate” at the beginning of the second sentence because the original proposal to delete the phrase was mistakenly omitted in the notice of proposal.
  - (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] **at** N.J.A.C. 6A:9, Professional Standards[, shall also be counted toward seniority].
2. The Department proposes at proposed new N.J.A.C. 6A:32-12.1(c)1 to replace “an auxiliary teacher or a teacher aid” with “or paraprofessional.” “Paraprofessional” is defined at N.J.A.C. 6A:32-2.1 as a school or classroom aide who assists appropriately certified personnel with the supervision of student activities. The Department has determined that using “paraprofessional” will provide greater clarity and will support the section’s purpose, which is to allow for approval of increased kindergarten class size with additional supports for the teacher.
  - (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 at 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 at 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 at 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]] **paraprofessional** is employed full-time to provide for the increased size.**

3. The Department proposes new N.J.A.C. 6A:32-13.1(c)3 to provide detail on the Commissioner-established criteria that district boards of education must use when creating their annual virtual or remote instruction plans. The additional criteria will ensure that school districts are providing instruction that meets the requirements of the New Jersey Student Learning Standards, meeting the digital needs of students, meeting the needs of English language learners (ELLs) and students with disabilities, communicating with families, establishing attendance policies, delivering meals, maintaining buildings, and meeting other district-specific needs. As stated at proposed N.J.A.C. 6A:32-13.1(a), “district board of education” refers 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. The Department also proposes to recodify proposed N.J.A.C. 6A:32-13.1(c)3 as new N.J.A.C. 6A:32-13.1(c)4.

**(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 **at (c)3 below** for the occurrence of one of the events at (b) above; [[and]]**

**3. The school district’s program of virtual or remote instruction::**

- i. Explains, to the greatest extent possible, the equitable delivery of, and access to, virtual and remote instruction, including descriptions of the following:**

- (1) The design of synchronous and/or asynchronous virtual or remote learning plans that will maximize student growth and learning;
  - (2) How the school district will continuously measure student growth and learning in a virtual or remote instruction environment; and
  - (3) The school district's plan for measuring and addressing any ongoing digital divide issue(s), including a lack of access to the internet, network, or devices;
- ii. Addresses the needs of students with disabilities and include descriptions of the following:
- (1) The delivery of virtual or remote instruction in order to implement, to the greatest extent possible, students' individualized education programs (IEPs), including material and platform access;
  - (2) The methods used to document IEP implementation, including the tracking of student progress, accommodations, and modifications;
  - (3) How case managers follow up with parents to ensure services are implemented, to the greatest extent possible, in accordance with IEPs; and
  - (4) How the school district plans to conduct IEP meetings, evaluations, and other meetings to identify, evaluate, and/or reevaluate students with disabilities;

**iii. Addresses the needs of English language learners (ELLs) and**

**include descriptions of the following:**

**(1) How the school district includes an English as a second**

**language (ESL) and/or bilingual education program**

**aligned with State and Federal requirements to meet the**

**needs of ELLs;**

**(2) The process to communicate with parents of ELLs,**

**including providing translation materials, interpretative**

**services, and information available at the parent's**

**literacy level;**

**(3) The use of instructional adaptations for example,**

**differentiation, sheltered instruction, Universal Design**

**for Learning), access to technology, and strategies to**

**ensure ELLs access the same standard of education as**

**non-ELL peers; and**

**(4) The training for teachers, administrators, and**

**counselors to learn strategies related to culturally**

**responsive teaching and learning, social-emotional**

**learning, and trauma-informed teaching for students**

**affected by forced migration from their home country;**

**iv. Accounts for student attendance in accordance with (d) below**

**and include the following:**

**(1) A description or copy of the school district's attendance**

**policies, including how the school district will determine**

**whether a student is present or absent during virtual or**

remote instruction, and how a student's attendance will factor into promotion, retention, graduation, discipline, and any other decisions that will reflect the student's performance;

v. Describes how the school district is communicating with the parents when a student is not participating in virtual or remote instruction and/or submitting assignments;

vi. Includes a plan for the continued safe delivery of meals to eligible students;

vii. Includes an outline of how buildings will be maintained throughout an extended period of closure; and

viii. Includes district-specific factors, including, but not limited to, considerations for Title I extended learning programs, 21st Century Community Learning Center Programs, credit recovery, other extended student learning opportunities, accelerated learning, and social and emotional health of staff and students, transportation, extra-curricular programs, childcare, and community programming; and

[[3.]] 4. 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.**

4. The Department proposes new N.J.A.C. 6A:32-13.2(b)3 to provide detail on the Commissioner-established criteria that approved private schools for students with disabilities (APSSDs) must include when creating their annual virtual or remote instruction plans. The proposed new rule will apply the criteria proposed at N.J.A.C. 6A:32-13.1(c)3 to the annual virtual or remote instruction plans developed by APSSDs. The Department also proposes to recodify proposed N.J.A.C. 6A:32-13.2(b)3 as new N.J.A.C. 6A:32-13.2(b)4.

**(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 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 (a) above; [[and]]**
3. **The APSSD's program of virtual or remote instruction shall include the criteria at N.J.A.C. 6A:32-13.1(c)3; and**

**[[3.]] 4. 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.**