

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

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



**Adoption Level
June 1, 2022**

PHILIP D. MURPHY
Governor

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

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, School District Operations

Reason for Action: Readoption with amendments

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

Sunset Date: July 15, 2022

Attached are the adoption materials related to the proposed readoption with amendments of N.J.A.C. 6A:32.

The Department of Education (Department) is proposing to readopt the chapter and to adopt the amendments presented in the notice of proposed substantial changes along with the original amendments proposed in 2021 that were not changed.

In May 2021, the 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.

On January 5, 2022, the State Board approved for publication in the New Jersey Register the notice of proposed substantial changes, which included a number of changes to the proposed amendments. No part of the original rulemaking was adopted. The January 2022 State Board action approved the Department's revised proposal for amendments to certain rules at N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2.

In response to comments received from the public, the Department proposed amendments to terms at N.J.A.C. 6A:32-12.1. Additionally, the Department proposed agency-initiated changes at N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2. At N.J.A.C. 6A:32-5.1(e), the existing second sentence starts with "Upon acquisition of a standard certificate," however, this text was mistakenly omitted from the published text of the notice of proposal but should have been proposed for deletion. The Department also proposed new 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.

The attached adoption level comment-response form contains the following three sets of comments: (1) comments received during the initial comment period giving rise to substantial changes in the proposal upon adoption (The comments were already presented to the State Board and published in the New Jersey Register on February 7, 2022, at 53 N.J.R. 223(a).); (2) comments received during the initial comment period that did not give rise to changes in the rule proposal; and (3) comments received in response to the notice of proposed substantial changes upon adoption. Following the comment-response form is the rule text as currently proposed for the State Board's adoption.

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

This comment and response form contains comments since the July 14, 2021, meeting of the State Board of Education (State Board) when the original proposed amendments were considered at proposal level and during the 60-day comment period. Comment one is the already-published comment received during the initial comment period giving rise to substantial changes in the proposal upon adoption. Comments two through 53 were received during the initial comment period and did not give rise to changes in the rule proposal. Comments 54 through 86 were received in response to the notice of proposed substantial changes upon adoption that was published in the New Jersey Register on February 7, 2022.

Topic: School District Operations **Meeting Date:** June 1, 2022

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

Division: Field Support and Services

Completed by: Division of Field Support and Services

Summary of Comments and Agency Responses:

The following is a summary of the comments published in the Notice of Substantial Changes and the Department's responses. The summary also includes agency-initiated changes. 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
6. Jonathon Pushman, Director of Government Relations, New Jersey School Boards Association
7. Vittorio S. LaPira, Attorney, Fogarty and Hara, Counselors at Law
8. Kathleen Fernandez, Executive Director, New Jersey Teachers of English to Speakers of Other Languages/New Jersey Bilingual Educators
9. Elizabeth Athos, Senior Attorney, Education Law Center
10. Rebecca Spar, New Jersey Special Education Practitioners
11. Lady Jimenez Torres, Policy Director, New Jersey Consortium for Immigrant Children

1. Comments Received During Initial Comment Period Giving Rise to Substantial Changes in Proposal upon Adoption

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 agreed with the commenters. Therefore, the Department proposed to delete “auxiliary teacher” from proposed new N.J.A.C. 6A:32-12.1(c)1.

2. Comments Received During Initial Comment Period Not Giving Rise to Changes in the Rule Proposal

2. **Comment:** The commenters requested that the Department delay in the adoption of the proposed amendments at N.J.A.C. 6A:32 until further stakeholder engagement occurs. The commenters requested that the State Board readopt N.J.A.C. 6A:32 without amendments to prevent the chapter from expiring and to provide time for the Department to engage stakeholders to discuss the proposed amendments and their potential impact. **(1, 2, 3, 5, and 6)**

Response: The Department appreciates the request for additional stakeholder engagement; however, the Department has proposed amendments and new rules at N.J.A.C. 6A:32 that are based on existing Federal requirements and State statute that must be codified. The Department commits to engaging stakeholders through the implementation of the proposed readoption with amendments and new rules, as needed.

3. **Comment:** The commenters stated that many of the proposed amendments at N.J.A.C. 6A:32 are confusing and not found in statute. The commenters listed the following as examples:

- Replacing “school day” with “days in session”;
- Instituting “days in membership”; and
- Proposing definitions of “remote learning” and “virtual learning” that do not reflect statute or distinguish between synchronous and asynchronous learning. **(1, 3, 4, and 5)**

Response: The Department appreciates the level of uncertainty in the field as new terms are being introduced into the lexicon of commonly used terms. However, creating definitions that align to Federal definitions, like “days in session” and “days in membership,” will allow local education agencies (LEAs) to keep a more accurate accounting of student attendance that aligns to Federal reporting. The Department proposes to codify the definitions of “days in session” and “days in membership” for use in the calculation of a student’s absentee rate and chronic absenteeism rates, which already has been defined in the February 2021 guidance document for LEAs titled [“Guidance for Reporting Student Absences and Calculating Chronic Absenteeism.”](#) Additionally, the terms are currently used in collection for student attendance in NJSMART.

The Department was charged with creating definitions for both “virtual instruction” and “remote instruction” pursuant to P.L. 2020, c. 27. The proposed definitions provide the flexibility to LEAs to design such instruction using both synchronous and asynchronous learning.

4. **Comment:** The commenter stated that the Commissioner’s memorandum regarding the readoption without amendments at N.J.A.C. 6A:11, Charter Schools, provides precedent to readopt a chapter without amendments and allow for stakeholder engagement. The commenters stated that the disruptions related to COVID-19 that impacted stakeholder

engagement relevant to N.J.A.C. 6A:11 also apply to the N.J.A.C. 6A:32. **(2, 5, and 6)**

Response: The Department appreciates the request for additional stakeholder engagement. However, the proposed amendments and new rules at N.J.A.C. 6A:32 are based on existing Federal requirements and State statute that must be codified, regardless of the COVID-19 pandemic limiting stakeholder engagement. The Department commits to engaging stakeholders through the implementation of the proposed amendments and new rules, as needed.

5. **Comment:** The commenters expressed concern with aspects of the proposed readoption that change regulations to fit Department-developed documents and programs instead of ensuring the documents or programs reflect regulatory language. **(3, 4, and 5)**

Response: The Department appreciates the commenters' concerns and agrees that, in some instances, the amendments and new rules are proposed to meet existing Federal requirements and State statute that must be codified. The Department is also aligning the chapter to how school districts and the State must calculate chronic absenteeism per the State's approved ESSA Plan.

6. **Comment:** The commenter stated that the proposed amendments inadequately clarify the status of an emancipated minor and whether the individual is considered to be an adult for decision-making purposes. **(4)**

Response: The Department disagrees with the commenter because "adult student" encompasses emancipated minors, who are be able to participate in decision-making and are required to be notified of the same matters as an adult student or parent.

7. **Comment:** The commenter stated that N.J.A.C. 6A:32-2.1 contains several problematic proposals, including the elimination of certain long-used terms and phrases. The commenter also stated that the section, as proposed for amendment, includes invented new terms that are confusing, illogical, and found nowhere in State statutes, regulations, or negotiated agreements. **(5)**

Response: The commenter did not provide details regarding the specific terms and phrases that problematic, deleted or confusing; therefore, the Department cannot respond.

8. **Comment:** The commenter stated that the proposed terms at N.J.A.C. 6A:32-2.1 do not align with the Federal Every Student Succeeds Act (ESSA) or other Federal or State statute, despite the Department citing ESSA and equity as the rationale for some of the changes. The commenter also stated that the proposed deletion of the definition for "average daily attendance" is concerning. **(4)**

Response: The commenter did not provide details regarding the specific terms that do not align with the Federal Every Student Succeeds Act (ESSA) or other Federal or State statute; therefore, the Department cannot respond. The Department proposes to delete the definition of "average daily attendance" because existing N.J.A.C. 6A:32-8.2(g) will be recodified as N.J.A.C. 6A:32-8.5 with amendments. The amendments specify how to calculate the "average daily attendance," which is self-explanatory; therefore, a definition at N.J.A.C. 6A:32-2.1 is not required.

9. **Comment:** The commenter expressed concern with the proposed deletion of "average daily attendance" at N.J.A.C. 6A:32-2.1. The commenter stated that the term is a long-used measure in school operations, monitoring, and school aid formulas. The commenter also stated that the definition for "average daily attendance" at N.J.A.C. 6A:32-8.5 should appear in the definitions section at N.J.A.C. 6A:32-2.1. **(5)**

Response: The Department disagrees with the commenter that "average daily attendance" should be maintained at N.J.A.C. 6A:32-2.1. The Department proposes to

delete the definition of “average daily attendance” because existing N.J.A.C. 6A:32-8.2(g) will be recodified as N.J.A.C. 6A:32-8.5. with amendments The amendments specify how to calculate the “average daily attendance,” which is self-explanatory; therefore, a definition at N.J.A.C. 6A:32-2.1 is not required.

- 10. Comment:** The commenter stated that the proposed term “days in membership” at N.J.A.C. 6A:32-2.1 is not found in State statute. The commenter also questioned the need for the term and stated it could lead to unnecessary confusion. **(2)**

Response: The Department appreciates the level of uncertainty in the field as new terms are introduced. However, creating definitions that align to Federal definitions, like “days in membership,” will allow LEAs to keep a more accurate accounting of student attendance that aligns to Federal reporting requirements. The Department proposes to codify the definition “days in membership” for use in the calculation of a student’s absentee rate and chronic absenteeism rates, which already has been defined in the February 2021 guidance document for LEAs titled “[Guidance for Reporting Student Absences and Calculating Chronic Absenteeism](#).” Additionally, the terms are currently used in collection for student attendance in NJSMART.
- 11. Comment:** The commenter stated that the proposed term “days in membership” is not an appropriate characterization of student enrollment and attendance. The commenter recommended alternative terms such as “days of student enrollment,” “individual student enrollment,” or “individual student attendance.” The commenter stated that the alternative terms would be readily understood and transparent and not further confuse the educational community or community at large. **(5)**

Response: The Department’s proposed definition for “days in membership” is part of the calculation to determine a student’s attendance rate and chronic absenteeism rates per the New Jersey ESSA State Plan. “Days in membership” refers to the number of possible days a student may attend school and not the actual number of days a student attends school. The Department maintains that the proposed definition will assist LEAs in keeping a more accurate accounting of student attendance that aligns to Federal reporting requirements. Further, the Department’s proposed definition of “days in membership” is currently used in the calculation of a student’s absentee rate and chronic absenteeism rates as defined in “[Guidance for Reporting Student Absences and Calculating Chronic Absenteeism](#).” These terms are currently used in collection for student attendance in NJSMART.
- 12. Comment:** The commenter questioned why the proposed definition for “personally identifiable information” at N.J.A.C. 6A:32-2.1 limits the applicability to a reasonable person in the school community. The commenter requested that the Department amend the definition to delete “in the school community.” **(6)**

Response: The Department is proposing to align the definition at N.J.A.C. 6A:32-2.1 with the “personally identifiable information” definition in the Family Educational Rights and Privacy Act (FERPA). The FERPA definition explicitly states, “a reasonable person in the school community.”
- 13. Comment:** The commenter recommended that the Department consider creating a different class of student records that are accessible with redaction and delineate other student records that are never subject to access by third parties, rather than adopting, at N.J.A.C. 6A:32-2.1, the definition of “personally identifiable information” in the FERPA to establish redaction requirements for student records to fulfill Open Public Records Act (OPRA) requests. The commenter stated that the Department should undertake further study, including potentially engaging a task force or focus groups of interested parties,

before reissuing the revised regulations. The commenter further stated that the Department's review should include serious consideration of whether a new category of records would be more appropriate. (7)

Response: The Department disagrees with the commenter and will continue to align the requirements for redaction of student record requirements with the FERPA for OPRA requests. A party not identified at N.J.A.C. 6A:32-7.5(a) must request access to student records through the OPRA. Once a student record is removed of all personally identifiable information, then it is no longer considered a student record and is releasable through the OPRA. Therefore, a new category of records is not necessary.

14. **Comment:** The commenter stated that the definition of "personally identifiable information" at N.J.A.C. 6A:32-2.1 would not require redaction of significant amounts of sensitive personal information that should not be disclosed even if the documents are anonymized through redaction of names and other personally identifiable information. The commenter also stated that there are certain types of student records that parents or adult students would never consent to disclosing to third parties, such as psychiatric evaluations of students, individualized education programs (IEPs), and social history evaluations. The commenter further stated that a third party could request all psychiatric evaluations on file in a school district and released records that are redacted for personally identifiable information still would contain sensitive information that no parent expect to be released. The commenter also stated that there is no basis for a third party to obtain such records, and that students and parents have an expectation of privacy that certain details remain private and confidential even though they do not fall within the definition of "personally identifiable information."

The commenter stated that public personnel records have greater privacy protections under N.J.S.A. 47:1A-10 than student records under the proposed rulemaking. The commenter also stated that inappropriate for third parties to have access to students' records containing sensitive information when the law forbids access to similar public employee records.

The commenter further stated that, without clear standards, there will be continued litigation on issues concerning the scope of redactions, or denials of access for what school districts deem targeted requests that meet subsection 10 of the proposed definition of "personally identifiable information." (7)

Response: The Department disagrees with the commenter. The proposed definition of "personally identifiable information" at N.J.A.C. 6A:32-2.1 contains a list for school districts to use when redacting a student record. The list comes directly from the definition in the FERPA. Information that can be released after personally identifiable information has been removed would not be attributable to any student. For example, the requestor would know that psychiatric examinations are conducted but not be able to identify which students and, therefore, privacy is protected. The requirements to remove personally identifiable information may be very similar, resulting in the personnel record no longer considered a personnel record and can be released through the OPRA. The proposed definition of "personally identifiable information," when applied to a student record, will result in the record no longer being considered a student record, which will make it releasable under the OPRA.

15. **Comment:** The commenter stated that the proposed definition of "personally identifiable information" includes information requested by a person who the district board of education "reasonably believes knows the identity of the student to whom the student record relates." The commenter also stated this provision is effectively meaningless when a requestor submits an anonymous request under the OPRA. The commenter further stated that there is no way for school districts to know whether a requestor might know

the identity of the students whose records are being produced. The commenter also stated that a knowledgeable requestor can get information that would otherwise be protected from disclosure simply by making the request anonymously.

The commenter also stated that subsection 10 of the proposed definition does not address anonymous requests, which could be for a particular class, or even a particular school. The commenter further stated that the proposed regulations do not provide school officials with a vehicle for denying such requests and, therefore, fail to adequately protect student privacy interests in this regard. (7)

Response: The Department disagrees. Pursuant to N.J.S.A. 47:1A-1, OPRA requests can be anonymous. School districts must use their discretion and may consult with the district board of education attorney prior to releasing a redacted student record. Further, the school district is required to remove personally identifiable information, as defined at N.J.A.C.6A:32-2.1, and any other information that may identify a student prior to releasing the record. The Department disagrees that the proposed regulations do not provide school officials with a vehicle for denying anonymous requests and, therefore, fails to adequately protect student privacy interests. Specifically, N.J.A.C. 6A:32-7.5(g)1 states that the district board of education or charter school or renaissance school project board of trustees must make a reasonable decision that a student's identity cannot be determined whether through single or multiple releases, or when added to other reasonably available information. The regulation allows school districts to deny a request because personally identifiable information cannot be safeguarded.

16. **Comment:** The commenter recommended revising the definition of “student records” to exempt certain types of records that contain information about a student and allow the public to access those records subject to redaction. The commenter stated that the definition, as proposed for amendment, is inadequate to protect the privacy interests of students. The commenter also stated that student records, such as student health records, counseling notes, IEPs, evaluation reports, progress reports, disciplinary incident reports or HIB reports, or report cards, should never be accessible to third parties, even in redacted form. The commenter further stated that the risk is too great and the privacy interests should outweigh any alleged need to access this information, absent a bona fide researcher.

The commenter also stated that there are other types of student records where the privacy interests are far more remote and their disclosure after redaction would strike an appropriate balance between transparency about government spending and the privacy rights of students. The commenter cited records that would more commonly be thought of as “business records” that are also “student records,” such as contracts for tuition to out-of-district schools; contracts with service providers (that is, nurses, therapists, etc.) for individual students; and settlement agreements between parents and the district board of education.

The commenter suggested an amendment to the proposed new language in the definition of a “student record” that states “In the absence of any ‘information related to an individual student,’ the document(s) no longer meets the definition of “student record.” The commenter suggested that “the document(s)” be replaced with “student record that is a business record (tuition contracts, contracts with service providers, and settlement agreements).”

The commenter also suggested amendments at new N.J.A.C. 6A:32-7.5(g)1, which, in part, allows LEAs to release under the OPRA, without consent, records removed of all personally identifiable information, as such documents do not meet the definition of a student record. The commenter requested that “records removed” be replaced with “those student records that are business records specified in N.J.A.C. 6A:32-1.2 removed.” The commenter also requested that the following be added at the end of the regulation: “In

no event, however, shall a district board of education or charter school or renaissance school project board of trustees release records to an anonymous OPRA requestor (whether truly anonymous or using a palpably obvious pseudonym).” (7)

Response: The Department disagrees with the commenter. Revising the definition of “student record” to exempt certain types of records that contain information about a student and, therefore, allow public access to the records after redaction is not necessary, provided all personally identifiable information is removed. Additionally, a student health record is not part of a “student record” is protected through the Federal Health Insurance Portability and Accountability Act (HIPAA), and cannot be disclosed under the OPRA.

The Department disagrees with the commenter’s suggested edit to the definition to replace “the document(s)” with “student record that is a business record (tuition contracts, contracts with service providers, and settlement agreements),” because contents of a student record cannot be split among multiple records. The school district is responsible for responding to OPRA requests and for removing all personally identifiable information from responsive records before their release. Further, the Department disagrees with the commenter’s proposed amendment at N.J.A.C. 6A:32-7.5(g)1 to replace “records removed” with “those student records that are business records specified in N.J.A.C. 6A:32-2.1 removed,” and to add “In no event, however, shall a district board of education or charter school or renaissance school project board of trustees release records to an anonymous OPRA requestor (whether truly anonymous or using a palpably obvious pseudonym),” at the end of the regulation. The Department disagrees with creating another record called a “business record” for reasons stated above and, pursuant to N.J.S.A. 47:1A-1 OPRA requests can be anonymous.

17. **Comment:** The commenter stated that the proposed definitions for “remote instruction” and “virtual instruction” at N.J.A.C. 6A:32-2.1 do not include safeguards to ensure that school districts do not create programs that are unworkable, unmanageable, educationally unsound, or not offered. (4)

Response: The Department was charged with creating definitions for both “virtual instruction” and “remote instruction” pursuant to P.L. 2020, c. 27. The proposed definitions provide the flexibility to LEAs to design such instruction using both synchronous and asynchronous learning. As with in-person instruction, LEAs have the flexibility to create lessons to meet the regulatory requirements and the same expectation is made for virtual or remote instruction. The same safeguards are in place to ensure that school districts do not create programs that are unworkable, unmanageable, educationally unsound, or not offered. One safeguard is the monitoring of school districts through the New Jersey Quality Single Accountability Continuum.

18. **Comment:** The commenter stated that the definitions for “remote instruction” and “virtual instruction” at N.J.A.C. 6A:32-2.1 are nearly identical and asked the Department to describe the difference between the two terms. More specifically, the commenter asked if it is possible to employ “remote instruction” without using “virtual instruction.” (6)

Response: The Department has defined “virtual instruction” as the provision of active instruction when the school building is closed and the student and the instructor are in different locations and instruction is facilitated remotely through the internet and computer technologies. The proposed definition for “remote instruction” does not include that instruction is facilitated remotely through the Internet or computer technologies when the school building is closed, and the student and the instructor are in different locations. An LEA may employ remote instruction without using virtual instruction.

19. **Comment:** The commenter stated that the proposed definitions for “remote instruction” and “virtual instruction” at N.J.A.C. 6A:32-2.1 do not represent the way the terms have

been used by educators during the past 18 months. (2)

Response: The Department was charged with creating definitions for “virtual instruction” and “remote instruction” pursuant to P.L. 2020, c. 27. The proposed definitions provide the flexibility to LEAs to design virtual and remote instruction plans using both synchronous and asynchronous learning.

20. **Comment:** The commenter stated that the proposed definitions for “remote instruction” and “virtual instruction” at N.J.A.C. 6A:32-2.1 do not reflect that the terms are used interchangeably within the education community. The commenter also stated that there should be no distinction in the definition and that remote instruction does not exclude virtual means, whether synchronous or asynchronous. The commenter further stated that the COVID-19 pandemic has shown that virtual/remote/online instruction by fully certified staff may be necessary in an extended emergency to protect staff and students, but teaching and learning in a safe, healthy environment where both staff and students are physically present and without risk to health or safety still works best for preschool through grade 12 students and staff. (5)

Response: The Department is purposefully making a distinction between the definitions for “virtual instruction” and “remote instruction” as required by P.L. 2020, c. 27. School districts should begin to differentiate between the two modes of instruction when in-person instruction is not available to students. Remote instruction excludes instruction by virtual means, which gives a school district the flexibility to provide instruction to meet the needs of its student population. If the instruction is being facilitated through electronic means, then it is virtual instruction. The Department agrees with the commenter that learning in a safe, healthy environment where both staff and students are physically present and without risk to health or safety still works best for preschool through grade 12 students and staff.

21. **Comment:** The commenter stated that replacing “provide” with “maintain” at N.J.A.C. 6A:32-3.2(a)3 diminishes school district, charter school, and renaissance school project accountability. The commenter also stated that the statements of assurance should be both submitted, on file and accessible online within a school district, and available for public review. The commenter further stated that the documents are useless without scrutiny for compliance and should be fully transparent and identify any holdings, ties, or connections that an individual may have to companies, groups, vendors, lawmakers, or other individuals that directly or indirectly are connected to, or benefit from, the school district or school. (5)

Response: The proposed amendment at N.J.A.C. 6A:32-3.2(a)3 requires district boards of education and charter school or renaissance school project boards of trustees to maintain documentation that each member has received and reviewed the Code of Ethics. The additional information that the commenter requested exists at N.J.S.A. 18A:12-25 and 26 and at N.J.A.C. 6A:28-3.

22. **Comment:** The commenter stated that N.J.A.C. 6A:32-5.1(b), as proposed for amendment, fails to clarify that seniority credit must be restored if a discipline or suspension is modified, overturned, or otherwise set aside or found unwarranted or excessive by a board, court, arbitrator, or other State adjudicating body. The commenter also stated that N.J.A.C. 6A:32-5.1(e) should apply to individuals who hold and are working under an emergency or provisional certificate only to the portion of their assignment covered by that certificate. The commenter further stated that there may be instances where a standard certificate holder is working under both a standard certificate and a provisional certificate and that the individual should not be penalized from gaining seniority under the standard certificate. The commenter also stated that N.J.A.C. 6A:32-

5.1(e), as proposed for amendment, is confusing and subject to misinterpretation. (5)

Response: The Department disagrees that N.J.A.C. 6A:32-5.1(b) is unclear. The regulation, as proposed for amendment, specifically states that leaves of absence or suspension resulting from confirmed discipline do not count toward seniority credit, which means that unconfirmed discipline leave would automatically count toward seniority. Further, the Department disagrees that N.J.A.C. 6A:32-5.1(e) is confusing and subject to misinterpretation. N.J.A.C. 6A:32-5.1(f) specifies that, whenever a person holds employment simultaneously under two or more endorsements, or in two or more categories, seniority shall be counted in all endorsements and categories in which the person is, or has been, employed.

23. **Comment:** The commenter requested the rational of permitting, at N.J.A.C. 6A:32-5.1(b), an unpaid leave of absence for disciplinary reasons to count toward seniority while unpaid leaves for reasons such as maternity or workplace injury would not be counted. The commenter also requested confirmation that N.J.A.C. 6A:32-5.1(b) involves only seniority and has no bearing on the rules regarding acquisition of tenure. (6)
Response: The Department disagrees with the commenter that the proposed amendments at N.J.A.C. 6A:32-5.1(b) permit an unpaid leave of absence for disciplinary reasons to count toward seniority credit. Rather, the proposed amendments state that any leave of absence or suspension resulting from confirmed discipline shall not receive seniority credit. Specifically, only unpaid leaves of absence for study or research up to 30 days may be credited toward seniority. Lastly, N.J.A.C. 6A:32-5.1(b), as proposed for amendment, applies only to seniority.
24. **Comment:** The commenter recommended that the Department amend N.J.A.C. 6A:32-5.1(b) to state that paid leaves of absence that occur during an investigation while a decision is pending and that ultimately result in disciplinary action shall be credited toward seniority. (2)
Response: The Department disagrees that N.J.A.C. 6A:32-5.1(b) needs further amendment. Under the regulation, as proposed for amendment, paid leaves continue to count toward seniority. The proposed amendments clarify that the unpaid leaves only for study or research count toward seniority.
25. **Comment:** The commenter expressed support for N.J.A.C. 6A:32-6.2, as proposed for amendment. The commenter agreed that policies and procedures for physical or psychiatric examinations must guarantee confidentiality of such records. (5)
Response: The Department appreciates the support.
26. **Comment:** The commenter stated that the proposed amendments at N.J.A.C. 6A:32-7 will increase the potential for misuse of student records and the potential liability for, and attacks against, school staff and school districts in erring in the release of student record information. The commenter also stated that the proposed amendments will create provisions enabling the release of student records that are not in concert with case law. The commenter further stated that the risk of releasing identifiable student indicators is great, particularly with respect to the wide array of potential identifiers. (5)
Response: The Department appreciates the commenter's concerns about releasing personally identifiable information when a school district releases records through an OPRA request. The proposed definition of "personally identifiable information" aligns to the term's definition in the FERPA. If an LEA eliminates all personally identifiable information from a student record, then it is no longer considered a student record and can be released. The LEA is responsible for ensuring that the record is redacted for all personally identifiable information.

27. **Comment:** The commenter stated that proposed amendments at Subchapter 7, Student Records, are inconsistent and unclear and could risk violations of student privacy. **(1)**
Response: Although the commenter did not specify which amendment(s) at Subchapter 7 is inconsistent and unclear; the Department maintains that the amendments proposed at Subchapter 7 provide guidance to school districts in responding to OPRA requests for student records and will decrease the likelihood that student privacy will be compromised.
28. **Comment:** The commenter expressed concern that the proposed amendments at Subchapter 7 contain multiple problematic changes related to student records and student privacy. **(3)**
Response: The commenter did not provide details regarding specific problematic changes related to student records and student privacy at Subchapter 7; therefore, the Department cannot respond.
29. **Comment:** The commenter inquired whether recodified N.J.A.C. 6A:32-7.5(b), which states that school districts may charge a reasonable fee for reproduction of student records, not to exceed the schedule of costs set forth at N.J.S.A. 47:1A-5, includes special service charges as permitted at N.J.S.A. 47:1A-5.c. The commenter also asked which procedures or criteria boards of education should use to determine whether the cost is preventing parents or adult students from exercising their rights. **(6)**
Response: The cross-reference to the OPRA, N.J.S.A. 47:1A-5, is inclusive of N.J.S.A. 47:1A-5.c. District boards of education are responsible for determining a reasonable fee for reproduction of student records that aligns with the provisions at N.J.S.A. 47:1A-5. District boards of education can consult with their attorneys to determine if a fee aligns with the OPRA or is preventing parents or adult students from exercising their rights under N.J.A.C. 6A:32-7 or other Federal and State rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14.
30. **Comment:** The commenter suggested an amendment to the first sentence at N.J.A.C. 6A:32-7.5(e)7, which allows secretarial and clerical personnel under the direct supervision of certified school personnel to be permitted access to portions of the record to the extent necessary for the entry and recording of data and the conducting of routine clerical tasks. The commenter stated that the regulation should state that “certificated school district employees and secretarial and clerical personnel who are school district employees employed directly by the district board of education on a permanent basis and under the direct supervision of certified school personnel” are permitted access. The commenter also stated that temporary employees or individuals from external companies should not have any access to student records. **(5)**
Response: The commenter’s suggested language assumes that all staff in a school district are employed directly by the school district on a permanent basis. District boards of education have the authority to staff school districts, as necessary, and the Department cannot regulate that a school district employ secretarial and clerical staff on a permanent basis, which is why the existing rules require access to be under the supervision of certified school personnel. Existing N.J.A.C. 6A:7.5(e)14 through 16 establish strict parameters for external individuals accessing a student record. Organizations, agencies, and persons from outside the school may access student record if they have the written consent of the parent or adult student, or a court order, or if they are a bona fide researcher.
31. **Comment:** The commenter stated that the proposed amendments at N.J.A.C. 6A:32-7 would inadvertently increase liability for school districts, run the risk of violations of students’ privacy rights, and do not follow the Appellate Division’s decision in *L.R. v.*

Camden City School Dist., 452 N.J. Super. 56 (App. Div. 2017) *aff'd* 238 N.J. 247 (2019).

The commenter stated that the ability under the OPRA for an individual to make an anonymous request would be a potential violation of student privacy. The commenter also stated that the broadened term “organizations,” in lieu of a *bona fide* researcher, is problematic for school districts and does not meet the standards of the definition of *bona fide* researcher in current law and code. The commenter further stated that the broadened term would enable organizations, with their own agendas, to access student records that should remain private. The commenter stated that, as an example, N.J.A.C. 6A:32-7.5(e) provides that individual student discipline records are private records and not for observation by anyone other than the record holder or the record holder’s parent or legal guardian or under limited circumstances prescribed by court order. The commenter further stated that the proposed amendments will open up access to a broader range of individuals contrary to the interests of students and past law/practice in the State. **(2)**

Response: The Department disagrees with the commenter’s interpretation of the proposed amendments at N.J.A.C. 6A:32-7. Proposed N.J.A.C. 6A:32-7.5(g)1 establishes that a student record removed of all personally identifiable information is no longer considered a student record and, therefore, can be released through an OPRA request. If a party not listed at N.J.A.C. 6A:32-7.5(e) submits an OPRA request, the district board of education, charter school, or renaissance school project must ensure that all personally identifiable information has been removed before releasing the record(s) without consent. N.J.A.C. 6A:32, as proposed for readoption with amendments and new rules, continues to require parental consent when a school district is releasing a student record. Proposed N.J.A.C. 6A:32-7.5(g)1 concerns only OPRA requests for a student record submitted by a party other than those listed at N.J.A.C. 6A:32-7.5(e). Existing N.J.A.C. 6A:32-7.5(e)16 continues to allow bona fide researchers to have access to students records.

32. **Comment:** The commenter stated that proposed N.J.A.C. 6A:32-7.5(g)1 does not meet the requirements of the Superior Court Appellate Division in *L.R. v. Camden City School Dist.*, 452 N.J. Super. 56 (App. Div. 2017) *aff'd* 238 N.J. 247 (2019). The commenter also stated that, in *L.R. v. Camden City School Dist.*, the Appellate Division was tasked with resolving various claims concerning student records and whether they were accessible under the OPRA. In bringing resolution to the claims, the commenters stated that the Appellate Division held that the plaintiffs must either show that they were “bona fide” researchers or that they had obtained a court order as required at N.J.A.C. 6A:32-7.5. The commenter further stated that the currently proposed regulations would eliminate that requirement for OPRA requests for student records. **(6)**

Response: The Department disagrees with the commenter. N.J.A.C. 6A:32-7.5(e)16 continues to allow bona fide researchers to have access to students records. Proposed N.J.A.C. 6A:32-7.5(g)1 concerns only OPRA requests for a student record submitted a party other than those listed at N.J.A.C. 6A:32-7.5(e). If a party not listed at N.J.A.C. 6A:32-7.5(e) submits an OPRA request, the district board of education, charter school, or renaissance school project must ensure that all personally identifiable information has been removed before releasing the records without consent.

33. **Comment:** The commenter stated the Appellate Division in *L.R. v. Camden City School Dist.*, 452 N.J. Super. 56 (App. Div. 2017) *aff'd* 238 N.J. 247 (2019) said that “the school districts shall not turn over the redacted records until they first provide reasonable advance notice to each affected student's parents or guardians. The parents and guardians must be afforded the opportunity to object and provide insight to the school district officials about what may comprise or reveal personally identifying information in their own child's records before the redactions are finalized.” The commenter also stated that

proposed N.J.A.C. 6A:32-7.5(g)1 contains no procedure for notice to parents or for parents to object to the release of a redacted student record. The commenter further stated that the proposed language specifically says that records may be released “without consent.” The commenter further stated that the lack of language permitting parental notice and objection violates the court mandate, needlessly endangers student privacy, and unreasonably increases liability for district boards of education attempting to fulfill OPRA requests. The commenter also stated that the proposed amendments attempt to authorize a process whereby a student record can become, through enough redaction, a government record under the OPRA even though that approach specifically was rejected by the Appellate Division. (6)

Response: Proposed N.J.A.C. 6A:32-7.5(g)1 establishes that a student record removed of all personally identifiable information is no longer considered a student record and can be released through an OPRA request. If a student record has been redacted properly, it will have no impact on the individual student and, therefore, not require parent approval to be released. Additionally, the Department continues to require parental consent when a school district releases a student record. Specifically, N.J.A.C. 6A:32-7.6(a)4 states that prior to disclosure of student records to organizations, agencies, or persons outside the school district pursuant to a court order, the district board of education shall give the parent or adult student at least three days’ notice of the name of the requesting agency and the specific records requested unless otherwise judicially instructed. The notification shall be provided in writing, if practicable. Only records related to the specific purpose of the court order shall be disclosed. Additionally, N.J.A.C. 6A:32-7.7(a)3 states that student records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, impermissible disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons. The parent or adult student may request an immediate stay of disclosure pending final determination of the challenged procedure as described in this subchapter.

34. **Comment:** The commenter stated that proposed N.J.A.C. 6A:32-7.5(g)1 does not provide the detailed guidance requested by the courts regarding redaction of student records so they are an accessible government document under the OPRA. The commenter also stated that the proposed regulation describes a standard of reasonableness when redacting a student record. The commenter further stated that any detailed guidance should provide to school district administrators clear and concise instructions on the handling of anonymous record requests and that guidance should place an emphasis on student privacy and safety without increasing liability to district boards of education. (6)
Response: The FERPA states a reasonable standard must be used when ensuring that a student’s identity cannot be determined. The Department maintains that proposed N.J.A.C. 6A:32-7.5(g)1 is consistent with the FERPA. The district board of education is responsible for ensuring that the requestor cannot identify a student when releasing a student record requested through the OPRA.
35. **Comment:** The commenter stated that proposed N.J.A.C. 6A:32-7.7(a)4 would require school districts to provide records to third parties at parental request immediately, pending the challenge of any student records appeal. The commenter also stated that this provision would harm student privacy and increase liability for school districts. The commenter further stated that district boards of education should not be required to provide records to third parties unless and until the appeal has been finalized. (6)
Response: The Department disagrees with the commenter. N.J.A.C. 6A:32-7.7(a) states that a parent or adult student may request that the district board of education release the student record to the organization, agency or person that previously was denied access to the same record. The district board of education may deny such a request.

36. **Comment:** The commenter stated that the use of “immediate” at proposed N.J.A.C. 6A:32-7.7(a)4 regarding access to student records could be viewed as a way to bypass the OPRA. The commenter also stated that the expectation of “immediate” could cause school districts to forgo critical checks to ensure that all identifying information has been removed and that could lead to mistakes when redacting records. The commenter further stated that the district board of education attorney usually reviews records before release, which takes additional time. The commenter also stated that the OPRA distinguishes between records that must be provided immediately and those that must be provided within seven days of the request’s submission. The commenter contended that student records, if releasable under the OPRA, would fall under the law’s seven-day provision and not require immediate release.

The commenter also recommended that proposed N.J.A.C. 6A:32-7.7(a)4, which allows a parent or adult student to request immediate access to student records for organizations, agencies, and persons denied access pending final determination of the challenged procedure, as described in the subchapter, be deleted. The commenter stated that there is a buffer that has been in place for a long time and new regulations should not be creating opportunities for important, private student records to be accessible by anyone other than the record holder, or record holder’s parent or guardian, without extremely strict scrutiny. The commenter also stated that access to student records should never be immediate, absent a court order or express written consent of the record owner. (2)

Response: The Department disagrees with the commenter. N.J.A.C. 6A:32-7.7(a) states that a parent or adult student may request that the district board of education release the student record to the organization, agency or person that previously was denied access to the record. The district board of education may deny such a request. N.J.A.C. 6A:32-7.7 is not related to the OPRA but pertains to a parent’s or adult student’s right to appeal a portion of the student record in general or for release.

37. **Comment:** The commenter stated that the proposed amendments at Subchapter 8, Student Attendance and Accounting, are troublesome. The commenter also stated that the subchapter, as proposed for amendment, seems to be unforgiving and lacks any exception for legitimate medical absence. The commenter further stated that this is perplexing, particularly in the middle of a pandemic. (5)

Response: The amendments proposed at Subchapter 8 -- specifically N.J.A.C. 6A:32-8.4 -- address how a school district accounts for student absences for State reporting purposes. Absences for medical reasons have always been reported to the State as unexcused absences, and the proposed regulations do not change this reporting requirement. The proposed amendments at Subchapter 8 also address how a school district may adopt policies that establish locally approved or excused absences consistent with N.J.A.C. 6A:16-7.6 for the purposes of expectations and consequences regarding truancy, student conduct, promotion, retention, and the award of course credit.

38. **Comment:** The commenter expressed concern with the proposed amendment at N.J.A.C. 6A:32-8.2(a) to replace “class” with “program of instruction. The commenter stated that the two terms are not synonymous or equivalent. (4)

Response: The term “class” at existing N.J.A.C. 6A:32-8.2(a) means the type of program a student is enrolled for reporting purposes in the New Jersey School Register. Some examples include, but are not limited to, a student’s grade level, half-day or full-day kindergarten, pre-school, multiple disabilities class, or autism special class. The term “program of instruction” is much broader than “class” and, therefore, better meets the section’s purpose.

39. **Comment:** The commenter stated that the proposed amendment at N.J.A.C. 6A:32-8.3(a)

to delete “[f]or purposes of school attendance” at the beginning of the regulation about a day in session could have a negative impact on implementation and interpretation of negotiated agreements between public school employees and district boards of education, particularly with respect to educational support professionals. The commenter also stated that custodial/maintenance or secretaries and clerks may still have to report for duty to a building when the physical building is closed. The commenter further stated that the section should re-emphasize that it relates to “student school attendance.” (5)

Response: The Department disagrees with the commenter that that the proposed amendment at N.J.A.C. 6A:32-8.3(a) could have a negative impact on implementation and interpretation of negotiated agreements between public school employees and district boards of education, particularly with respect to educational support professionals. A “day in session” is one factor in calculating student attendance rates and chronic absenteeism rates as set forth at N.J.A.C. 6A:32-8.6. Specifically, the rate is determined by subtracting the student’s total number of days present from the student’s days in membership and dividing the result by the student’s days in membership. A “day in session” means the school district is open for instruction and all staff should be working. The Department agrees that a school district will determine whether custodial/maintenance or secretaries and clerks may still have to report for duty to a building when it is closed to in-person instruction, but that has no impact on student attendance.

40. **Comment:** The commenters expressed concern with the proposal at N.J.A.C. 6A:32-2.1 to replace “school day” with “day in session.” The commenters stated that the new term is not found in statute or negotiated contracts. The commenters also stated that the new term fails to identify when a building is closed to students, but other services or tasks may still need to be performed on or around school property by school staff. The commenters further stated that a school day should remain a school day whether learning is in person or remote/virtual. (3 and 4)

Response: The Department is not proposing a definition of “day in session” at N.J.A.C. 6A:32-2.1. Rather, N.J.A.C. 6A:32-8.3 as proposed for amendment defines a “day in session” as related to accounting for school attendance. The definition does not need to take into account when a building is closed to students, but other services or tasks may still need to be performed on or around school property by school staff because that has no impact on student attendance. Proposed N.J.A.C. 6A:32-8.3 clarifies what a school day means as related to student attendance. The Department’s proposed amendments allow a school district to consider a remote or virtual instruction day as a “day in session” when the State or local health department determines that it is advisable to close, or mandates closure of, the school district’s schools due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days.

41. **Comment:** The commenter stated that, by eliminating the concept of “school day,” the Department failed to take into account the unintended consequences in moving away from language long used in negotiated agreements between school employees and school districts and in school funding determinations. The commenter further stated that the removal of “school day” could have severe consequences for educational support professionals and create unnecessary conflict in implementation and interpretation of negotiated agreements. (5)

Response: The Department disagrees with this commenter. The Department is not proposing to eliminate the concept of a school day; rather, the Department proposes to clarify that a school day is a “day in session,” which is defined as a school day for purposes of being considered one of the 180 required days of school. The Department does not anticipate this clarification will result in consequences for educational support

professionals or a conflict in the implementation and interpretation of negotiated agreements because LEAs remain responsible for providing 180 required days of instruction.

42. **Comment:** The commenter stated that N.J.A.C. 6A:32-8.4(c), as proposed for amendment, indicates that an enrolled student shall be recorded as present if they are present for at least half a day in session. The commenter also stated that N.J.A.C. 6A:32-8.3(b) defines “day in session” as not less than four hours. The commenter asked if the intent of the proposed amendments and new rules is that an enrolled student shall be recorded as present if the student is present for as little as two hours. The commenter recommended that the regulations be amended to reflect that a student shall be marked present if present for not less than four hours. The commenter further recommended that the Department hold a thorough conversation with the education community about the intent of the proposed rule and how it is mapped to NJSMART.

The commenter also recommended that the Department hold a more thorough conversation with the education community to explain the intent of the new language and how it is mapped to NJSMART. The commenter further recommended suspending any substantive changes to student attendance and accounting as long as the State is in a pandemic. The commenter also recommended consideration of a separate section that would enable a school district to list a student absent due to COVID-19 circumstances. (2)

Response: Proposed N.J.A.C. 6A:32-8.4(c) are meant to clarify the existing rules at N.J.A.C. 6A:32-8.3(k), which also require students to be present for at least two hours to count as a day in attendance. The existing regulation also requires a student in a school that is in session during both the forenoon and the afternoon to be present for at least one hour in the forenoon and one hour in the afternoon to be recorded as present for the full day. Proposed N.J.A.C. 6A:32-8.4(c) provides more flexibility for LEAs in scheduling a day in session but does not change the minimum two-hour attendance rule for students. Therefore, the Department declines to amend N.J.A.C. 6A:32-8.4(c).

If Subchapter 8 is adopted by the State Board of Education as proposed, the Department intends to provide LEAs with guidance on the subchapter’s amendments through its county offices of education. NJSMART currently collects attendance in the manner set forth at Subchapter 8. The Department cannot maintain separate rules for student absences related to COVID-19 because it would be inequitable under State and Federal law.

43. **Comment:** The commenter stated that N.J.A.C. 6A:32-8.4(e) and (f) make no allowances for, or recognition of, pandemic-related absences in which students and staff were required to quarantine due to exposure to COVID-19 both within and outside of school buildings. The commenter also stated that not recognizing or making a distinction between this situation and normal chronic absenteeism is a disservice to school districts, students, and staff. (5)

Response: The Department appreciates the commenter’s concern. The calculation of chronic absenteeism is established in the New Jersey ESSA State Plan and has not been modified for COVID-19; therefore, the proposed regulations reflect the same.

44. **Comment:** The commenter stated that “enrichment course” is used and defined very broadly at N.J.A.C. 6A:32-2.1 and 10. The commenter also stated that the term could be used to undercut the State statute that requires courses in public schools to be taught by staff members certified in the related subject area. The commenter further stated that there should be no distinction between who can teach credit and non-credit courses that are offered in public schools during the school year, particularly since certificated teaching staff can be evaluated in any assignment that they hold. The commenter also

stated that it is educationally unsound, unfair, and harmful to both students and staff to allow individuals who are not teaching staff members certified in a specific content area to be assigned to teach courses offered within a public-school program during the school day. The commenter further stated that the Department should not be providing any impression that State certification requirements can be violated. The commenter also stated that an artist-in-residence or similar program should be conducted in partnership with a licensed teaching staff member who is an employee of the school district and certified in the content area. (5)

Response: The Department disagrees with the commenter. Enrichment courses are offered only during summer school session and not during a school day. Specifically, enrichment course means any course or subject of a vocational nature for which no credits are awarded. The definition further states that district boards of education conducting summer school sessions shall employ teachers who possess valid certificates for the subjects taught. For curriculum enrichment courses, a school district may include resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor, or teacher but not for the entirety of the course. This provision provides a school district the flexibility to include educational and vocational experience taught by an expert in the vocational field of the enrichment course. The inclusion of a resource person still requires the school district to ensure that the enrichment course is led by a certified staff member.

45. **Comment:** The commenters expressed concern that the proposed amendments at N.J.A.C. 6A:32-10 fail to reinforce and make clear that summer courses must be taught by certified teachers. (4 and 5)

Response: The Department's proposed amendments have not changed the requirement that summer courses must be taught by certified teachers. Specifically, N.J.A.C. 6A:32-10.3 states that district boards of education conducting summer school sessions must employ teachers who possess valid certificates for the subjects taught. Curriculum enrichment may involve resource persons serving for specific periods of time under the supervision of a certified administrator, supervisor, or teacher.

46. **Comment:** The commenters stated that the proposal to increase the class size for kindergarten is concerning because research shows that smaller class sizes in early grades are essential to student success. (1 and 4)

Response: The Department is not proposing at new N.J.A.C. 6A:32-12.1 to increase class size for kindergarten classes. The Department proposes to move the rules related to kindergarten from existing N.J.A.C. 6A-8.3(c) to new Subchapter 12. The Department also proposes to maintain – at 25 students per teacher – the maximum enrollment for a kindergarten classroom in 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. The proposed new rules at new N.J.A.C. 6A:32-12.1 also require 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 to follow the provisions for kindergarten at N.J.A.C. 6A:13-3.2. Existing N.J.A.C. 6A:13-3.2 sets the limit at 21 students in kindergarten. Therefore, the class size limits will not change under new N.J.A.C. 6A:32-12.1.

47. **Comment:** The commenter expressed concern that proposed N.J.A.C. 6A:32-12.1(c) will require school districts to maintain a maximum enrollment for a kindergarten class of 25 students per teacher. The commenter stated that the class size is antithetical to what research shows is essential to student success in an early education program. The commenter also stated that the proposed regulations will impact at-risk students. The

commenter further stated that, as an example, families with resources will be able to shop for a private school with a smaller class size. The commenter requested that the Department amend proposed N.J.A.C. 6A:32-12.1(c) to establish the maximum enrollment at 20 students per teacher in a kindergarten classroom. The commenter stated that best practices indicate that every kindergarten class should have an extra pair of hands, even if it is part time. The commenter also stated that a district board of education experiencing budget issues could wait until the class size reaches 26 to hire an additional staff member under the proposed regulation. The commenter further stated that codifying 20 students or less per teacher in a kindergarten classroom provides the equity, opportunity, and access essential to a good start in a public school. **(2)**

Response: The Department appreciates the commenter’s concern and continues to require 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 to follow the provisions for kindergarten at N.J.A.C. 6A:13-3.2. Existing N.J.A.C. 6A:13-3.2 sets the limit at 21 students in kindergarten. The Department is continuing to limit all other school districts’ kindergarten class sizes to 25, allowing school districts the flexibility to staff the classroom, as needed. The proposed regulations do not require a school district to wait to hire additional staff until the class size reaches 26 students if the determination is made to provide additional support to a kindergarten class with a size less than 25 students.

48. **Comment:** The commenter expressed concern that the class size requirements for kindergarten at existing N.J.A.C. 6A:32-8.3(c) and proposed N.J.A.C. 6A:32-12.1(c) are much higher than recommended by long-standing educational research on class size. The commenter stated that small class size is essential for students beginning their formal educational journey. The commenter also stated that the maximum enrollment for kindergarten classes should be 15 students and never exceed that number. The commenter further stated that the addition of teacher assistants, aides, or paraprofessionals should not be an excuse or tool used to increase class sizes and, instead, should be used to augment services for students who are from impoverished backgrounds or otherwise at risk, students with disabilities, or students who require additional assistance for any number of social, emotional, or academic reasons. **(5)**

Response: The Department appreciates the commenter’s concern and continues to require 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 to follow the provisions for kindergarten at N.J.A.C. 6A:13-3.2. Existing N.J.A.C. 6A:13-3.2 sets the limit at 21 students in kindergarten. The Department is continuing to limit all other school district kindergarten class sizes to 25, allowing school districts the flexibility to staff the classroom, as needed. Existing N.J.A.C. 6A:32-8.3(c), which is being recodified as new N.J.A.C. 6A:32-12.1(c)1, allows the executive county superintendent to permit non-*Abbott* school districts to increase the number of students in a classroom provided a paraprofessional is employed full-time to provide for the increased size. The Department disagrees that the addition of a paraprofessional staff member is only to increase classroom size. The addition of a full time paraprofessional staff member will also augment services for students who are from impoverished backgrounds or otherwise at risk, students with disabilities, or students who require additional assistance for any number of social, emotional, or academic reasons, while ensuring the certified teacher can continue to deliver the required educational standards for kindergarten. The executive county superintendent’s approval is a safeguard to ensure that all kindergarten students are being educated appropriately.

49. **Comment:** The commenters stated that Subchapter 13, Virtual or Remote Instruction, does not define “appropriate health agency.” **(1, 2, 3, and 5)**

Response: “Appropriate health agency” is identified in the authorizing statute at N.J.S.A. 18A:7F-9.b as an agency that can declare an emergency, which allows for a school district to implement its Department-approved virtual or remote instruction plan if the closure lasts longer than three consecutive days. The authorizing statute accounts for unforeseen local emergencies that may have to be called by an agency or officer that is not a Statewide public health agency, such as a local environmental agency. Therefore, a definition is not necessary.

50. **Comment:** The commenter asked if virtual or remote instruction can be used to provide home instruction as defined at N.J.A.C. 6A:16-1.3. **(6)**

Response: An LEA may choose to use virtual or remote instruction to provide home instruction for individual students entitled to home instruction pursuant to N.J.A.C. 6A:16-1.3.

51. **Comment:** The commenter stated that the reference “to the extent appropriate and practicable” at proposed N.J.A.C. 6A:32-13.1(b)1i could lead to litigation between school districts and families. The commenter also stated that even though the proposed regulation is congruent with Federal guidance that was issued at the beginning of school closures to in-person instruction due to COVID-19, the use of “to the extent appropriate and practicable” is not a high enough standard for the provision of educational opportunities to students with disabilities and their families. **(2)**

Response: The Department disagrees with the commenter. Proposed N.J.A.C. 6A:32-13.1(b)1i allows the school district flexibility in providing students with disabilities the same educational opportunities provided to general education students based on the type of emergency and the needs of each student. The proposed regulation does not circumvent due process rights that parents have to argue that the school district’s interpretation of “to the extent appropriate and practicable” is not enough and request additional educational opportunities.

52. **Comment:** The commenters stated that proposed N.J.A.C. 6A:32-13, Virtual or Remote Instruction, misses an opportunity to promote increased labor-management collaboration between the district board of education, school district administrators, and the school employees’ majority representative in the planning and implementation of the virtual or remote instruction plan. **(4 and 5)**

Response: The virtual or remote plan must be submitted by the district board of education that will establish the criteria for the development and implementation of the plan.

53. **Comment:** The commenters stated that the proposed subchapter allows school districts to receive retroactive approval for a virtual or remote instruction plan if they cannot complete the plan and submit it to the Department by July 31 annually, but does not require a public hearing or public comment on such a move. The commenters also stated that the proposed subchapter does not require involvement of the school employees’ majority representative in the plan’s development. **(4 and 5)**

Response: The Department is not proposing a public hearing or public comment prior to a district board of education’s submission of the virtual or remote instruction plan because the authorizing statute, N.J.S.A. 18A:7F-9.b, does not require a hearing or comment. A district board of education can hold a public hearing or public comment period for the plan without it being required.

3. **Comments Received upon Publication of Notice of Proposed Substantial Changes upon Adoption to Proposed Amendments at N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2.**

- 54. Comment:** The commenter expressed support for the proposed substantial changes at N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2 because they will clarify the proposed amendments. The commenter stated that the proposed substantial changes at N.J.A.C. 6A:32-13.1 related to the criteria for remote instruction will provide greater clarity regarding the standards to be implemented concerning the utilization of remote instruction. **(6)**
Response: The Department thanks the commenter for the support.
- 55. Comment:** The commenter expressed support for the change at proposed N.J.A.C. 6A:32-12.1(c)1 to replace “an auxiliary teacher or a teacher aid” with “or paraprofessional.” The commenter stated that the use of “paraprofessional” will align the rule with Federal law rather than using terms not universally used Statewide. **(5)**
Response: The Department thanks the commenter for the support.
- 56. Comment:** The commenter expressed support that proposed N.J.A.C. 6A:32-13, Virtual or Remote Instruction, specifically references N.J.S.A. 18A:7F-9.b and the context within which the subchapter must be viewed and administered. The commenter stated that N.J.A.C. 6A:32-13, as amended under the notice of substantial changes upon adoption, still does not address who is involved in creating the plan. The commenter also stated that the Department missed an opportunity to promote labor-management collaboration in the planning and implementation of the virtual or remote instruction plan. The commenter further stated that school administrators, principals, district board of education members, parents and school staff – through the majority representative(s) – need to be engaged in the virtual or remote instruction plan’s development. The commenter also stated that the participation and feedback from all parties is essential to ensuring that the plan is not only a pro forma filing with the State, but is a realistic, viable, transparent, and academically sound approach to operating during an extended health emergency or other state of emergency. **(5)**
Response: The authorizing statute does not contain provisions regarding the school district’s process for creating the plan. Therefore, the district board of education and school district administration are responsible for the process of virtual or remote instruction plan development, including determining the level of involvement of district staff, board members and parents.
- 57. Comment:** The commenter stated that N.J.A.C. 6A:32-13 must be amended to address the length of a virtual school day. The commenter also stated that the existing requirements at N.J.A.C. 6A:32-8.3 for a school day to be not less than four hours of instruction to count toward the 180-day requirement in first through 12th grades and 2.5 hours for kindergarten must explicitly be incorporated into the regulations governing virtual or remote instruction. **(10)**
Response: The Department disagrees that the commenter’s suggested amendment is necessary. The length of a school day is consistent, whether in-person, remote, or virtual instruction are being provided. Therefore, including requirements for the length of a school day at N.J.A.C. 6A:32-13 would duplicate existing rules and is unnecessary.
- 58. Comment:** The commenter stated that the Department’s proposed regulations must protect the constitutional entitlement of all New Jersey school-age children to a free thorough and efficient education for the 180 days mandated by the Legislature. The commenter also stated that a school district’s ability to count one or more days of virtual instruction toward the 180-day requirement must be conditioned on all school-aged children having their own device that is sufficient for accessing virtual instruction, as well as access to broadband sufficient for all family members to use simultaneously

during a school day. The commenter contended that, instead, proposed N.J.A.C. 6A:32-13.1(c)3 merely requires that a school district's program of virtual or remote instruction explains, to the greatest extent possible, the equitable delivery of and access to virtual and remote instruction without actually assuring that equitable delivery and access will be provided. (9)

Response: The Department contends that the commenter's concerns are addressed at proposed N.J.A.C. 6A:32-13.1(c)3i(3), which states that the virtual or remote instruction plan must contain a description of the school district's plan for measuring and addressing any ongoing digital divide issues, including a lack of internet access, network access, and/or sufficient access to devices. By virtue of developing a plan for measuring and addressing ongoing digital divide issues, the school district will be continually assessing any ongoing digital divide issues to ensure equitable delivery and access are provided.

59. **Comment:** The commenter expressed concern that proposed N.J.A.C. 6A:32-13.1(c)3 improperly requires a school district's program of virtual or remote instruction to explain to the greatest extent possible, the equitable delivery of and access to virtual and remote instruction. The commenter stated that a school district should not be allowed to count virtual days toward the 180-day requirement if a school district cannot explain how there will be equitable access to virtual instruction. (10)

Response: The Department disagrees with the commenter that school districts should be able to provide in the plan how they will provide equitable delivery of, and access to, virtual and remote instruction for all students. At the time of the plan's development, the school district knows its student population and their needs; however, the student population does not remain the same throughout the course of the school year. Therefore, the school district may need to create a new way to provide equitable delivery of, and access to, virtual and remote instruction for a new student who was not enrolled in the school district during the original development of the plan. Proposed N.J.A.C. 6A:32-13.1(c)3 provides this flexibility. Even if it is not stated in the school district's plan for virtual or remote instruction, school districts are required to provide equitable delivery of, and access to, virtual and remote instruction for all students.

60. **Comment:** The commenter stated that the Department needs to provide, at proposed N.J.A.C. 6A:32-13.1(c)3i(1) and (2), further direction to school districts regarding the design of virtual or remote instruction programs and the measurement of student growth and learning. The commenter also stated that it is unclear how Department is distinguishing "student growth" from "student learning." The commenter stated that the mix of synchronous and asynchronous learning must also maximize engagement, motivation, and connection of students, as well as increasing levels of student self-direction. The commenter also stated that the mix of synchronous and/or asynchronous learning varies depending, among other things, on the student's age and academic level, the student's level of self-direction, and the student's learning style. The commenter further stated that there is not one mix of synchronous and asynchronous learning that will maximize growth, learning, engagement, motivation, connection of students, and student self-direction for all students. The commenter stated that each school district's virtual learning plan must set forth how the school district will determine the mix of synchronous and asynchronous learning depending upon the needs of students. (10)

Response: The Department disagrees that clarification is needed for school districts to understand how to measure student growth and student learning during virtual or remote instruction. School districts understand the difference between the two commonly used terms and know that there are ways to measure each through benchmark, formative, and summative assessments.

61. Comment: The commenters stated that proposed N.J.A.C. 6A:32-13.1(c)3i(3), which requires the submission of a school district “plan for measuring and addressing any ongoing digital divide issue(s)” is not sufficient to ensure all students have free and adequate digital access. The commenters also stated that, after two years and billions of Federal dollars to address the COVID-19 pandemic, it is reasonable to require school districts to provide all students with the devices and adequate internet access needed for virtual learning at no cost to students’ families. **(9 and 10)**

Response: The Department disagrees that the requirement for school districts to have a plan to address any digital divide issues is insufficient to ensure access to technology for virtual or remote learning. School districts are developing this plan at a certain point in time and must have a system in place to continually monitor for any digital divide issue that may arise related to changes in the student population.

62. Comment: The commenter stated that it is a violation of statutes such as the IDEA, Section 504, the ADA, and the New Jersey Law Against Discrimination to leave any student without free, adequate digital access. The commenter suggested that proposed N.J.A.C. 6A:32-13.1(c)3i(3) be amended to include the following: The school district’s plan shall include how it has determined that all students will have access to the needed device(s) and any other technology needed to access the virtual instruction, as well as adequate broadband at no cost to the family. When there is more than one school age child in the home, each child must have their own device and broadband access must be adequate for the number of children in the household who need to access it simultaneously during a virtual day. **(10)**

Response: The Department disagrees that the requirement for school districts to have a plan to address any digital divide issues is insufficient to ensure access to technology for virtual or remote learning. School districts are developing this plan at a certain point in time and must have a system in place to continually monitor for any digital divide issue that may arise related to changes in the student population. Requiring school districts to have a plan to address any ongoing digital divide issues, including a lack of internet access, network access, and/or sufficient access to devices, will ensure that all students have free, adequate digital access and that there are no violations of statutes such as the IDEA, Section 504, the ADA, and the New Jersey Law Against Discrimination.

63. Comment: The commenters stated that the inclusion of “to the extent appropriate and practicable” at N.J.A.C. 6A:32-13.1(b)1i and “to the greatest extent possible” at N.J.A.C. 6A:32-13.1(c)3ii(1) and (3) is insufficient to comply with IDEA, Section 504 of the Rehabilitation Act, or the Americans with Disabilities Act (ADA). The commenters also stated that the requirement at proposed N.J.A.C. 6A:32-13.1(b)1i for school districts to provide students with a disability with the same educational opportunities provided to general education students to the extent appropriate and practicable does not take into account that the IDEA and other anti-discrimination laws entitle students with disabilities to the supports, accommodations, and modifications needed to have equally effective access to the same educational opportunities provided to general education students. **(9 and 10)**

Response: The first part of the comment is outside of the scope of the notice of substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-13.1(b)1i.

The Department disagrees with the commenters that N.J.A.C. 6A:32-13.1(c)3ii(1) and (3) are insufficient to comply with the IDEA, Section 504 of the Rehabilitation Act, or the ADA. The proposed regulation provides the school district flexibility in providing students with disabilities the same educational opportunities provided to general education students, as well as any supports, accommodations and modifications specified in a student’s IEP or Section 504 plan, based on the type of emergency and the unique needs of each student.

64. Comment: The commenter stated that proposed N.J.A.C. 6A:32-13.1(c)3ii(1), which requires the school district's remote or virtual instruction plan to describe the delivery of virtual or remote instruction in order to implement, to the greatest extent possible, students' IEPs, including material and platform access, needs to be amended. The commenter suggested that the regulation be amended to require IEPs and 504 plans to be implemented during virtual school days unless the student's IEP team, including the student's parent, or Section 504 team has met and determined that some IEP services cannot be provided during virtual days. The commenter suggested that proposed N.J.A.C. 6A:32-13.1(c)3ii(1) be amended to read as follows:

- (1) Special education and related services, including speech-language services, counseling services, physical therapy, occupational therapy, and behavioral services, as well as accommodations and modifications, may be delivered to students with disabilities through the use of a virtual platform and as required by the student's IEP or Section 504 team, but only if the steps taken below are followed and if the school district ensures that it provides the devices and adequate broadband needed to access the instruction. At least annually and before any virtual instruction for students with disabilities is counted toward the 180-day requirement, an IEP or Section 504 meeting, including the parent, must be convened, at which time the participants will:**
 - (A) Decide if virtual instruction is appropriate for this student and if not, how, when, and where the special education, related services and accommodations and/or modifications required by the IEP or Section 504 plan will be made up;**
 - (B) Determine if the student has access to the device(s) and broadband necessary for participating in virtual instruction and if not, take the necessary steps to ensure that the student does have access at no cost to the student or family;**
 - (C) Decide if all of the special education, related services and accommodations/modifications in the IEP or 504 plan can be implemented virtually and if not, whether additional services or**

supports can be added to the IEP or 504 plan that will allow all IEP or 504 services to be implemented virtually;

- (D) If it is not possible to provide all of the IEP or Section 504 services during virtual instruction, decide how, when, and where the missing services/accommodations/ modifications will be made up;**
- (E) Include all of this information in the student’s IEP or Section 504 plan and provide proper written notice of the decisions to the parent in accordance with Section 504 or IDEA’s requirements; and**
- (F) Notify the parents that if they do not agree with the decisions of the IEP or 504 teams, they may exercise all of their rights and remedies under IDEA or Section 504, including but not limited to filing for mediation or due process and having their child entitled to the protections of the stay-put or maintaining the status quo during the pendency of the dispute and any appeals. (10)**

Response: The Department disagrees because the proposed regulations at N.J.A.C. 6A:32--13.1(c)3i(3) and(c)3ii(1) through (4) address the commenter’s concerns and the requested language. The inclusion of “to the greatest extent possible” enables school districts to try to meet the IEP or Section 504 requirements during virtual or remote instruction but if the services cannot be provided for an individual student, that student will be entitled to compensatory or makeup services.

- 65. Comment:** The commenter expressed support for the requirement at proposed N.J.A.C. 6A:32-13.1(c)3ii(3) to require the school district’s virtual and remote instruction plan to describe how case managers follow up with parents to ensure services are implemented in accordance with IEPs. The commenter stated that the inclusion of “to the greatest extent possible” after “implemented” must be deleted. The commenter stated that IEP or Section 504 teams must make determinations as to what IEP services and accommodations can be implemented virtually and when make-up or compensatory services are needed. The commenter also stated that it is the case manager’s responsibility to ensure that services are implemented in accordance with the student’s IEP, and it is not the parent’s obligation to act as their child’s teacher or paraprofessional or to oversee their child’s virtual school day. The commenter suggested that be amended to read as follows:

- (3) How case managers will follow up with parents to ensure services, accommodations, and modifications are being provided in accordance with IEPs or Section 504 plans, determine whether there are issues with the**

implementation including whether additional supports and services are needed, and, when needed, convene an IEP or Section 504 meeting to revise the plan for virtual instruction and determine any make up or compensatory services. (10)

Response: The Department appreciates the commenter’s concerns, but the requested language is unnecessary because N.J.A.C. 6A:14 already ensures the process suggested by the commenter for students with disabilities.

66. Comment: The commenter state that N.J.A.C. 6A:32-13.1(c)3ii(4) needs to be amended to add “timely” before "identify, evaluate, and/or reevaluate students with disabilities.” **(10)**

Response: The Department disagrees that the term “timely” should be inserted at N.J.A.C. 6A:32-13.1(c)3ii(4). The commenter provided no context for the definition of timely. Further, depending upon the reason for the emergency closure resulting in virtual or remote instruction, the regulation must be flexible to allow for the school district to address how it plans to conduct IEP meetings, evaluations, and other meetings to identify, evaluate, and/or reevaluate students with disabilities.

67. Comment: The commenters recommended that proposed N.J.A.C. 6A:32-13.1(c)3iii be amended to incorporate not only the general factors for English language learners (ELLs) that are in the proposed regulation, but also considerations relevant to ELLs during virtual or remote instruction. The commenters stated that the added descriptions should including the following: how ELLs will access virtual or remote instruction, including the availability of adequate broadband and devices with appropriate software for ELLs and native language communication with parents and students about virtual or remote instruction; how ELLs’ progress will be tracked during virtual or remote instruction; how ELLs will be timely identified and exited during virtual or remote instruction; and how school staff will follow up with parents of ELLs to determine whether ELLs are able to appropriately access services during virtual or remote instruction and, if not, determine how those services will be made up. **(9 and 10)**

Response: The Department disagrees that proposed N.J.A.C. 6A:32-13.1(c)3iii needs to be amended. A school district’s remote or virtual instruction plan does not negate the school district’s responsibilities to ensure that the services and supports afforded to ELLs continue during virtual or remote instruction. The proposed regulation affords the school district flexibility to provide services to ELLs based on the emergency and the individual student’s needs.

68. Comment: The commenters supported the Department’s addition of proposed N.J.A.C. 6A:32-13.1(c)3iii(2), which requires a school district’s program of virtual or remote instruction to address the needs of English language learners (ELLs) and include a description of the process to communicate with parents of ELLs, including providing translation materials, interpretative services, and information available at the parent’s literacy level. The commenters stated that limiting the process to “the parents of ELLs” is underinclusive because it leaves out parents with a primary language other than English whose children may not be classified as ELLs. The commenters stated that Federal law requires meaningful communication with all parents in a language they can understand, not only those parents whose children are also currently learning English. The commenters suggested that the Department amend N.J.A.C. 6A:32-13.1(c)3iii(2) to require school districts to include a process for communicating with all parents (that is,

parents of ELLs and any parent with limited English proficiency) in their native or preferred language. **(8, 9, 10, and 11)**

Response: The Department disagrees that amendments to the regulation are necessary. All school districts that receive Federal funding under Title I of the ESSA are required to have, as part of their standard operating procedures, a process for communicating with parents in their native language.

- 69. Comment:** The commenters suggested that the Department amend proposed N.J.A.C. 6A:32-13.1(c)3iii(3), which requires a school district’s program of virtual or remote instruction to describe 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. The commenters requested that the Department replace “technology” with “digital devices, internet, technical support (in language accessible to both student and parent/guardian/sponsor) for every student in the household.” **(8 and 11)**

Response: The Department disagrees with the commenters. Proposed N.J.A.C. 6A:32-13.1(c)3i(3) requires the school district’s remote learning plan to include 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. This includes providing technical support to students and families, as necessary.

- 70. Comment:** The commenter objected to the inclusion of “to the extent appropriate and practicable” at proposed N.J.A.C. 6A:32-13.2(d), which requires an approved private school for students with disabilities (APSSD) to provide virtual or remote instruction that is consistent with the student’s IEP to the extent appropriate and practicable and that meets the New Jersey Student Learning Standards. **(10)**

Response: The inclusion of “to the extent appropriate and practicable” allows APSSDs to try to meet the IEP or Section 504 requirements during virtual or remote instruction and, if services cannot be provided for an individual student, ensure that the student receives compensatory or makeup services.

- 71. Comment:** The commenter expressed concern that the proposed definition of “remote instruction” at N.J.A.C. 6A:32-2.1 does not define what remote instruction is or how it will be facilitated. The commenter stated that the only differences between the definitions of “remote instruction” and “virtual instruction” are that the former is not “active” instruction or “facilitated through the internet and computer technologies.”

The commenter stated that the use of paper packets and activity sheets as the sole means of instruction should not be permitted if that is the intent of the separate definition of “remote instruction.” The commenter also stated that, during school closures related to the COVID-19 pandemic, school districts used paper packets that were completed by students, returned to school, and not reviewed by teachers for months or, for related services, students with disabilities were emailed activity sheets to do on their own. The commenter further stated that the use of paper packets and activity sheets may have been necessary during the abrupt closure of schools in March 2020, but school districts have had two years to obtain the technology needed to provide virtual instruction and to train staff. The commenter also stated that the proposed definitions of “remote instruction” and “virtual instruction” will allow school districts to use, during intermittent school closures, paper packets for instruction to count toward the 180-day requirement and activity sheet for physical and occupational therapies. The commenter further stated that this would violate school districts’ legal obligation to provide a thorough and efficient education to all students, as well as a free and appropriate public education to students with disabilities. **(10)**

Response: The comment is outside of the scope of the notice of proposed substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-2.1.

72. **Comment:** The commenter stated that “remote instruction” and “virtual instruction” often are used interchangeably and suggested that the Department replace the separate definitions proposed at N.J.A.C. 6A:32-2.1 with the following combined definition:

Remote or virtual instruction is where the student and the teacher and related service provider are in different locations and instruction is facilitated by the child’s teacher or related service provider through the internet and computer technologies, such as discussion boards, video conferencing, and other online options due to the closure of the facility(ies) of the district board of education, charter school, renaissance school project, or approved private school for students with disabilities. Remote or virtual instruction can occur through a combination of synchronous with real-time active instruction and peer-to-peer collaboration, or asynchronous, with self-paced learning activities that take place independently of the teacher or related service provider. In both cases, teachers and related service providers must engage in regular and effective contact with students. The closure of the facility(ies) shall be pursuant to N.J.S.A. 18A:7F-9 or 18A:46-21.1 and for more than three consecutive school days due to a declared state of emergency, a declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure. (10)

Response: The comment is outside of the scope of the notice of proposed substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-2.1.

73. **Comment:** The commenter expressed concerns with the proposed definitions of “remote instruction” and “virtual instruction” at N.J.A.C. 6A:32-2.1 because the interchangeable use of the terms throughout the chapter and the absence of robust standards for remote and virtual instruction will lead to violations of students’ right to a thorough and efficient education under the State constitution and, for students with disabilities, to the right to a free and appropriate public education under the Federal Individuals with Disabilities

Education Act (IDEA).

The commenter stated that it is improper to use remote instruction when virtual instruction is authorized. The commenter also stated that the proposed definition of “remote instruction” is insufficient to ensure that constitutional, statutory, and regulatory standards of instruction are met. The commenter further stated that the proposed definition is vague regarding how remote instruction is to be implemented and conjures images of paper packets and activity sheets that substituted for in-person instruction during the early days of the COVID-19 pandemic. The commenter also stated that days that are absent of active instruction should no longer count toward the required 180 days of instruction. The commenter further stated that the Department must describe how remote instruction is to be implemented, how it differs from virtual instruction, and the conditions under which remote instruction is capable of providing thorough and efficient education or a free and appropriate public education.

The commenter also stated that the proposed definition for “virtual instruction” is inadequate to support constitutional and statutory standards because it is vague and does not specify if synchronous instruction must be included. The commenter asked whether the Department intends to permit school districts to provide solely asynchronous instruction with no requirement for daily and live, yet virtual, interaction between students and teachers. The commenter also asked, if the Department intends to allow solely asynchronous instruction, how that model delivers a thorough and efficient education or a free and appropriate public education.

The commenter further suggested that the Department incorporate into the definitions of “remote instruction” and “virtual instruction” the existing requirements at N.J.A.C. 6A:32-8.3 for a school day to be not less than four hours of instruction to count toward the 180-day requirement in first through 12th grades and 2.5 hours for kindergarten. **(9)**

Response: The comment is outside of the scope of the notice of proposed substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-2.1.

74. **Comment:** The commenters stated that the lack of technology in ELLs’ households was a well-documented issue during the COVID-19 pandemic. The commenters also stated that accommodations were made to provide technology for all students, but student access to technology at home since the return to in-person instruction has not been maintained at the same level. **(8 and 11)**

Response: The Department has no rules requiring a certain level of technology at home when in-person instruction is being offered. The rules proposed at N.J.A.C. 6A:32-13.1 apply only to meeting technology needs for remote and virtual instruction.

75. **Comment:** The commenters stated that proposed N.J.A.C. 6A:32-13.1(b) violates N.J.S.A. 18A:7F-9 by not requiring the district board of education and the Commissioner to approve the school district’s program of virtual or remote instruction in advance of the plan’s implementation. **(9 and 10)**

Response: The comment is outside of the scope of the notice of substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-13.1(b).

76. **Comment:** The commenter requested that the Department amend proposed N.J.A.C. 6A:32-13.1(b). The proposed rule states that, if the State or local health department determines that it is advisable to close, or mandates closure of, the schools of a school district due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days, the chief school administrator shall have the authority to implement the school district’s program of virtual or remote

instruction, pursuant to N.J.S.A. 18A:7F-9. The commenter requested that “then once it has been approved by the board of education and then Commissioner,” be added before “the chief school administrator.” (10)

Response: The comment is outside of the scope of the notice of substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-13.1(b).

77. **Comment:** The commenter stated that “electronic communication” is referenced at N.J.A.C. 6A:32-13.1(b)1ii, but the term is not defined in the regulation or at N.J.A.C. 6A:32-2.1. The commenter also stated that N.J.A.C. 6A:32-13.1(b)1ii does not relate the use of electronic communication to virtual or remote instruction. The commenter stated that a thorough and efficient education and a free and appropriate public education cannot be satisfied solely by, for example, teachers emailing or faxing activity sheets to students with instructions to complete the activity sheets. The commenter also stated that the emailing or faxing of activity sheets arguably could constitute “active instruction” that is “facilitated through the internet or computer technologies.” The commenter suggested that the amount of electronic communication used during virtual or remote instruction be limited to the amount and type of electronic communication that has been found to be effective in promoting the academic progress of, or providing a particular related service to, school-age children during intermittent school closures. The commenter also suggested that the role of electronic communication in virtual or remote instruction be spelled out. (9)

Response: The comment is outside of the scope of the notice of proposed substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-2.1 or 13.1(b)1ii.

78. **Comment:** The commenter recommended that a definition for “electronic communication” be added at N.J.A.C. 6A:32-13.1(b)1ii. The commenter stated that telephones are one means of communication and related services, like counseling, are provided through telephones. The commenter also stated that, absent a definition, “electronic communication” could include teachers emailing or faxing paper packets or activity sheets to students and counting it as fulfilling the one of the 180 days of instruction, which is unacceptable and unlawful. The commenter further stated that the term should be limited to the types of electronic communication that have been found to be effective in providing a particular related service to school-age children during intermittent school closures. The commenter also stated that the telephone was the only form of electronic communication deemed by the United States Department of Education to be viable means of providing related services during the COVID-19 pandemic.

The commenter proposed the following as a definition for “electronic communication”: “Electronic communication” means the provision of related services telephonically or through other means of electronic communication that have been shown to be effective in providing the particular related service to school-age children.” (10)

Response: The comment is outside of the scope of the notice of substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-13.1(b)1ii.

79. **Comment:** The commenter stated that proposed N.J.A.C. 6A:32-13.1(b)1i leaves open what criteria are used to determine whether it is appropriate for a student with a disability to participate in the same educational opportunities offered to general education students, as well as who makes the determination. The commenter stated that it is the responsibility of the IEP team or Section 504 committee, as applicable, to use criteria in statute, regulations, and case law to make the determination. The commenter also stated that proposed N.J.A.C. 6A:32-13.1(b)1i, which requires school districts to provide students with a disability with the same educational opportunities provided to general education

students to the extent appropriate and practicable, suggests that a school district can decide unilaterally that it is not practicable to allow students with disabilities to access the same educational opportunities provided to general education students when virtual or remote instruction is provided because schools are closed. The commenter further stated that the IDEA, Section 504, and the ADA do not allow entities to decide whether it is practicable to not discriminate against students with disabilities.

The commenter requested that the Department replace proposed N.J.A.C. 6A:32-13.1(b)1i with the following: “The school district shall ensure that students with disabilities are provided with equally effective access to the same educational opportunities provided to general education students, including but not limited to providing any support services, accommodations or modifications needed to ensure this happens. Decisions as to what supports, accommodations and modifications a student may require for equally effective access to educational opportunities offered to general education students is a decision that must be made at a properly convened meeting by the student’s IEP team, including the parent, or for students found eligible for Section 504 services, by a group of persons knowledgeable about the student. If the IEP or Section 504 team determines that separate or different services must be provided, the student must still be educated to the maximum degree appropriate with nondisabled peers.” (10)

Response: The comment is outside of the scope of the notice of substantial changes upon adoption, which did not include amendments at N.J.A.C. 6A:32-13.1(b).

- 80. Comment:** The commenter stated that the decision about whether to replace in-person instruction with electronic, virtual, or online platforms is appropriate for a student must be made by the student’s IEP or 504 team and not unilaterally by the school district. The commenter also stated that consideration of whether a student’s IEP or Section 504 plan can be implemented virtually, through electronic communications or online platforms, whether additional supports or services are needed, or whether virtual, electronic communication or online platforms are appropriate for a student even with additional supports and services should all be considered in advance by the student’s IEP or Section 504 team, along with the need for make up or compensatory services if electronic, virtual, or online services are not appropriate. The commenter further stated that alternatives to in-person instruction can be discussed and determined during the annual IEP meeting or in a separate IEP meeting. (9)

Response: The Department agrees with the commenter that the student’s IEP or 504 team must determine whether it is appropriate to replace in-person instruction with an electronic, virtual, or online platform, as governed by N.J.A.C. 6A:14, Special Education.

- 81. Comment:** The commenters stated that proposed N.J.A.C. 6A:32-13.1(c)4 exceeds the statutory authority by authorizing the Commissioner to approve a school district’s program for virtual or remote instruction retroactively when it is not submitted by July 31 of each year. The commenters contended that P.L. 2020, c. 27 enabled the Commissioner to retroactively approve only initial plans that were not submitted within 30 days of the statute’s effective date and did not extend the retroactive approval to the late submission of future plans. The commenters stated that a grace period should not be permitted for an annual submission of a school district’s plan following the initial submission. (9 and 10)

Response: The comment is outside of the scope of the notice of substantial changes upon adoption, which did not include amendments to the language at N.J.A.C. 6A:32-13.1(c)4.

- 82. Comment:** The commenter expressed support for the proposed amendments at N.J.A.C. 6A:32-5.1(e), which states, as proposed for amendment, that 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 the employee becomes the holder of a standard certificate. The commenter stated that the proposed amendments continue to recognize that all teaching staff members are held to the same standards as others during their employment and that time worked in those positions should be credited after they earn a standard certificate. The commenter also stated that the issuance of emergency certificates should remain limited and never apply to instructional certificates. The commenter further stated that emergency certificates are not an appropriate way to address teacher shortages. The commenter stated that teacher shortages should be addressed through recruitment and retention, which is done by making higher education and educator preparation programs more affordable, accessible, diverse, relevant, and culturally responsive; increasing and improving partnerships between educator preparation programs and school districts and linking potential or preservice educators with experienced educators; raising the status of and respect for the teaching profession by enhancing compensation (both salary and benefits) and improving working conditions on many levels; providing extensive support for novice educators and educators in new assignments; enabling all teaching staff members and other school staff to engage in relevant and varied professional learning experiences; allowing them to try new approaches in working with and supporting student learning; and expanding opportunities for teacher leadership and collaboration. (5)

Response: The Department appreciates the comment, but it is out of the scope of the notice of substantial changes upon adoption.

83. **Comment:** The commenter expressed concern that proposed N.J.A.C. 6A:32-12, Kindergarten, relocates provisions that have been contained at N.J.A.C. 6A:13, Programs and Practices to Support Student Development, and 6A:13A, Elements of High Quality Preschool Programs. The commenter questioned why the section on kindergarten would be carved out and moved to a catch-all set of rules. The commenter also cited multiple research studies that show smaller class sizes in early grades are essential to student success. The commenter stated that the Department missed the opportunity to align the rules with long-standing research on the appropriate class size and environment for supporting the social, emotional, and academic needs of all students, especially kindergarten students. The commenter suggested that the Department amend the rules to set the maximum kindergarten class size at 15 students to one teacher. The commenter also stated that paraprofessionals are not equivalent to certified teachers but can be used in accordance with N.J.A.C. 6A:32-12 to request expand a kindergarten class size. (5)

Response: The Department appreciates the comment, but it is out of the scope of the notice of proposed substantial changes upon adoption. The Department's responses to Comments 46, 47, and 48 address kindergarten class size under the proposed readoption of N.J.A.C. 6A:32.

84. **Comment:** The commenter urged the Department and the State Board to readopt the majority of the existing regulations at N.J.A.C. 6A:32 while continuing to discuss the proposed amendments. The commenter stated that it is understandable that the Department may need to move forward with the proposed regulations concerning virtual and remote instruction at N.J.A.C. 6A:32-13 because of timelines in State statute, as well as with the proposed amendments to clarify the regulation regarding emergency certificates and seniority. (5)

Response: The comment is outside the scope of the notice of substantial changes upon adoption. The response to Comment 2 addresses commenters' concerns regarding stakeholder engagement related to the proposed readoption of N.J.A.C. 6A:32.

85. **Comment:** The commenter expressed concern that the State Board's public testimony schedule did not align with the deadlines for comments on the proposed readoption with

amendments following publication in the New Jersey Register. The commenter stated that this trend continues with respect to other proposed rulemakings. The commenter also stated that this action only undercuts the provisions instituted to ensure adequate time for public review and comment after publication on proposed rules that have extensive impact on school districts, schools, staffs, students, parents, and communities. The commenter further stated that it creates the impression that any comments submitted within the deadlines published in the New Jersey Register will not be seriously considered by the agencies and boards responsible for developing, producing, and adopting the rules. The commenter also stated that this transparent process is even more critical now since the State, communities, educational institutions, agencies, and organizations are still dealing with pandemic-related issues and concerns while emerging from this challenging period. **(5)**

Response: The readoption with amendments of N.J.A.C. 6A:32 was a topic for two State Board public testimony sessions (June 16 and September 8, 2021), while the additional amendments proposed in the notice of substantial changes upon adoption were subject to public testimony for the March 2, 2022, State Board meeting. The Department considers all comments received from the time the State Board first reviews a proposed rulemaking up until the end of the 60-day comment period that occurs after the proposal's publication in the New Jersey Register. The Department is committed to working with stakeholders to support students, educators, and school officials as the State emerges from the COVID-19 pandemic.

- 86. Comment:** The commenter requested that the Department propose regulations related to the implementation of P.L. 2022, c. 2, which extends the statute of limitations for pandemic-related compensatory education claims and required the scheduling of IEP meetings to address compensatory education by no later than December 31, 2022. **(9)**

Response: The comment is outside the scope of the notice of proposed substantial changes upon adoption at N.J.A.C. 6A:32.

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

Chapter 32. School District Operations

Subchapter 1. Scope and Purpose

6A:32-1.1 Scope and purpose

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

Subchapter 2. Definitions

6A:32-2.1 Definitions

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

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

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

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

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

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

“Chief school administrator” means the superintendent of schools or the administrative principal if there is no superintendent. **At N.J.A.C. 6A:32-7, 8, and 13, “chief school administrator” includes charter school and renaissance school project lead persons.**

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

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

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

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

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

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

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

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

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

“Parent” means the natural or adoptive parent, legal guardian, surrogate parent appointed [according] **pursuant** to N.J.A.C. 6A:14-2.2, or a person acting in the place of a parent (such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student’s welfare). Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights [under] **pursuant to** this chapter. In addition, a [foster] **resource family** parent may act as a parent [under] **pursuant to** this chapter if the parent’s authority to make education decisions on the student’s behalf has been terminated by a court of appropriate jurisdiction.

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

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

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

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

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

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

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

“School contact directory for official use” means a compilation by a district board of education that includes the following information for each student: name, address, telephone number, date of birth, and school of enrollment. The directory may be provided for official use only to judicial, law enforcement, and medical personnel.

“Secondary” means grades nine through 12 in all high schools; grades seven and eight in junior high schools; grades seven, eight, and nine in middle schools; and grades seven and eight in elementary schools having departmental instruction.

“Statement of assurance” means a document [submitted by the chief school administrator to the executive county superintendent] that verifies compliance with regulatory requirements **and is submitted to the executive county superintendent by the chief school administrator.**

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

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

1. Name;
2. Grade level;
3. Date and place of birth;
4. Dates of school attendance;
5. Major field of study;
6. Participation in officially recognized activities;
7. Weight and height relating to athletic team membership;
8. Degrees;
9. Awards;
10. The most recent educational agency attended by the student; and
11. Other similar information.

“Student record” means information related to an individual student gathered within or outside the school district and maintained within the school district, regardless of the physical form in which it is maintained. Essential in this definition is the idea that any information that is maintained for the purpose of second-party review is considered a student record. Therefore, information recorded by certified school personnel solely as a memory aid and not for the use of a second party is excluded from this definition. **In the absence of any “information related to an individual student,” the document(s) no longer meets the definition of “student record.”**

“Supervisor” means any appropriately certified individual assigned with the responsibility for the direction and guidance of the work of teaching staff members.

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

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

Subchapter 3. District Boards of Education - General

6A:32-3.1 Special meetings of district boards of education

- (a) The secretary of the district board of education shall call a special meeting of the district board of education whenever:
1. Requested by the president of the district board of education;
 2. Requested by the chief school administrator when the district board of education fails to meet within two months during the period in which the schools in the district are in session; or

3. Presented with a petition signed by a majority of the full membership of the district board of education requesting the special meeting.
- (b) Public notice of the special meeting shall be made pursuant to law and regulation, including N.J.S.A. 18A:10-6. Additionally, the public notice shall include the date, time, location, and purpose(s) of the special meeting.

6A:32-3.2 Requirements for the code of ethics for district board of education members and charter school **or renaissance school project** board of trustees members

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

school **or renaissance school project** board of trustees member to read and become familiar with the Code of Ethics.

6A:32-3.3 Boards of school estimate

- (a) In any district board of education operating as a Type I school district, pursuant to N.J.S.A. 18A:9-2, the mayor of the municipality comprising the school district shall be the presiding officer of the board of school estimate.
- (b) In the event of the absence of the mayor at any meeting of the board of school estimate, the members present at [such] **the** meeting shall proceed to elect a presiding officer pro tem.

Subchapter 4. Employment of Teaching Staff

6A:32-4.1 Employment of teaching staff

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

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

6A:32-4.2 Approval of paraprofessional staff

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

6A:32-4.3 Access to personnel records

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

Subchapter 5. Seniority

6A:32-5.1 Standards for determining seniority

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

- (b) Seniority, pursuant to N.J.S.A. 18A:28-13 et seq., shall be determined according to the number or fraction of academic or calendar years of employment in the school district in **the** specific categories [as hereinafter provided] **at (I) below**. [The] **Credit toward seniority shall include** periods of unpaid absences not exceeding 30 calendar days aggregate in one academic or calendar year, leaves of absence at full or partial pay, and unpaid absences granted for study or research[, except for leaves]. **Any leave** of absence or suspension resulting from confirmed discipline[, shall be credited toward seniority. All] **and all** other unpaid absences or leaves of absence shall not receive seniority credit.
- (c) In computing length of service for seniority purposes, full recognition shall be given to previous years of service within the school district and to time of service in or with the military or naval forces of the United States or this State, pursuant to N.J.S.A. 18A:28-12.
- (d) Employment in the school district prior to the adoption of these standards shall be counted in determining seniority.
- (e) [The holder of] **An employee who holds** an emergency **or provisional** certificate shall not be entitled to seniority rights, but the years of employment under the emergency **or provisional** certificate shall count toward seniority when [he or she] **the employee** becomes the holder of a standard certificate[. Upon acquisition of a standard certificate, any period of service under a provisional certificate] as defined [in] **at N.J.A.C. 6A:9, Professional Standards**[, shall also be counted toward seniority].
- (f) Whenever a person holds employment simultaneously under two or more endorsements, or in two or more categories **at (I) below**, seniority shall be counted in all endorsements and categories in which [he or she] **the person** is, or has been, employed.

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

- (k) In the event of a person's employment in some category to which [he or she] **they** reverted, [he or she] **the person** shall remain [upon] **on** all the preferred eligible lists of the categories from which [he or she] **they** reverted. [He or she] **The person** shall be entitled to employment in any one or more such categories whenever a vacancy occurs to which seniority entitles [him or her] **them**.
- (l) The following shall be deemed to be specific categories, not necessarily numbered in order of precedence:
1. Superintendent of schools;
 2. Assistant superintendent[;].
 - i. Each assistant superintendent position shall be a separate category; and
 - ii. District boards of education shall adopt, for each assistant superintendent position, a job description that shall set forth qualifications and endorsements for [such] **the** position;
 3. Director[;].
 - i. Each director position shall be a separate category; and
 - ii. District boards of education shall adopt, for each director position, a job description that sets forth the qualifications and endorsements for [such] **the** position;
 4. High school principal;
 5. Adult high school principal;
 6. Alternative school principal;
 7. Vocational school principal;
 8. Junior high or middle school principal;

9. Elementary **school** principal;
10. Supervisor[;].
 - i. Each supervisory title shall be a separate category; and
 - ii. District boards of education shall adopt, for each supervisory position, a job description that sets forth the qualifications and specific endorsements required for [such] **the** position;
11. High school vice principal or assistant principal;
12. Adult high school vice principal or assistant principal;
13. Alternative school vice principal or assistant principal;
14. Junior high or middle school vice principal or assistant principal;
15. Elementary school vice principal or assistant principal;
16. Vocational school vice principal or assistant principal;
17. Secondary:
 - i. Any person holding an instructional certificate with endorsements shall have seniority within the secondary category only in [such] **the** endorsement(s) under which [he or she] **the person** has actually served;
 - ii. Whenever a person shall be reassigned from one subject area to another, all periods of employment in [his or her] **the person's** new assignment shall be credited toward [his or her] seniority in all endorsements in which [he or she previously held] employment **was previously held**;
 - iii. Any person employed at the secondary level in a position requiring an educational services certificate or an instructional endorsement shall acquire seniority only in the secondary category and only for the period of actual

service under [such] **the** educational services certificate or instructional endorsement; and

- iv. Persons employed and providing services on a districtwide basis under an instructional endorsement or an educational services certificate shall acquire seniority on a districtwide basis;

18. Elementary:

- i. [District boards of education that make a determination to] **To** reorganize instruction at grades seven and eight pursuant to this subchapter, **district boards of education** shall [do so by adoption of] **adopt** a formal resolution setting forth the reasons for [such] **the** reorganization;
- ii. Any person employed at the elementary level in a position requiring an educational services certificate or an instructional endorsement shall acquire seniority only in the elementary category and only for the period of actual service under [such] **the** educational services certificate or instructional endorsement;
- iii. [Persons] **Any person** employed and providing services on a districtwide basis under an instructional endorsement or an educational services certificate shall acquire seniority on a districtwide basis;
- iv. [Persons] **Any person** serving under **an** elementary endorsement[s] in departmentally organized grades seven and eight prior to September 1, 1983, shall continue to accrue seniority in the elementary category for all such service prior [to] and subsequent to September 1, 1983. In addition, [such] **the** person[s] shall accrue seniority in the secondary category but

limited to the school district's departmentally organized grades seven and eight and the specific subject area [actually] taught in [such] **the**

departmentally organized grades[,] subsequent to September 1, 1983; and

19. Additional categories of specific educational service endorsements issued by the State Board of Examiners and listed in N.J.A.C. 6A:9B.
- (m) [In the event of] **If** a restructure of grade levels [that] results in the elimination of all junior high or middle schools in the school district and the creation of schools with a grade-level organization that includes grades seven and eight, the seniority rights of the junior high or middle school principals, vice principals, and assistant principals displaced by [such] **the** restructuring shall be transferable to the newly reorganized schools in the category as defined [by] **at** (l)9 above.

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

6A:32-6.1 Scope and purpose

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

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

- (a) Pursuant to N.J.S.A. 18A:16-2, district boards of education shall adopt written policies and procedures for the physical examination of candidates for employment [and, where]. **The**

written policies shall provide for notification to candidates for employment regarding the requirements for physical examinations. The written policies also shall establish procedures to assure confidentiality during the collection, transmission, and storage of medical records of candidates for employment.

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

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

- (a) Pursuant to N.J.S.A. 18A:16-2, district boards of education shall require candidates for employment who have received a conditional offer of employment to undergo a physical examination such as testing for usage of controlled or dangerous substances or to determine whether the candidate is able to perform, with reasonable accommodation, job-related functions pursuant to P.L. 101-336, Americans with Disabilities Act of 1990.
- (b) Pursuant to N.J.S.A. 18A:16-2, **a district board[s] of education may require physical or psychiatric examinations of a school district employee whenever, in the district board of education’s judgment [of the district board of education], an employee shows evidence of deviation from normal physical or mental health[.]. The purpose of the physical or psychiatric examination shall be to determine the [individual’s] employee’s physical and mental fitness to perform, with reasonable accommodation, the position [he or she] the employee currently holds, or to detect any health [risks] risk(s) to students and other**

employees. When a district board of education requires an employee to undergo [an individual] **a physical or psychiatric** examination:

1. The district board of education shall provide the employee with a written statement of [reasons] **the reason(s)** for the required examination.
 2. The district board of education shall provide the employee with a hearing, if requested.
[2.] **i.** The determination of such a hearing shall be appealable to the
Commissioner pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:4, Appeals.
 3. The employee may **refuse**, without reprisal, [refuse] to waive [his or her] **their** right to protect the confidentiality of medical information, in accordance with P.L. 104-191, Health Insurance Portability and Accountability Act of 1996.
- (c) [Individual] **An individual** employee[s] may provide health-status information, including medications, that may be of value to medical personnel in the event of an emergency requiring treatment. In such instances, an employee may also choose to share with the building principal and, if desired, with the certified school nurse, information regarding current health status to assure ready access in a medical emergency.
- (d) Health records of candidates for employment and of current employees, including computerized records, shall be secured, stored, and maintained separately from other personnel files. Health records may be shared only with authorized individuals in accordance with N.J.S.A. 18A:16-5.
- (e) Pursuant to N.J.S.A. 18A:16-3, the district board of education shall bear the cost of examinations made by a physician or institution designated by the district board of education. However, the employee shall bear the cost if the examination is performed by a physician or institution designated by the employee with approval of the district board of education.

Subchapter 7. Student Records

6A:32-7.1 General considerations

- (a) This subchapter applies to all district boards of education, **charter schools, renaissance school projects, approved private schools for students with disabilities,** and private agencies that provide educational services by means of public funds. **Throughout this subchapter, unless otherwise indicated, “district board of education” refers to the governing body for each of the five types of agencies.**
- (b) Each district board of education shall compile and maintain student records and regulate access **in accordance with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and 34 CFR Part 99,** disclosure, or communication of information contained in [educational] **student** records in a manner that assures the security of [such] **the** records in accordance with this subchapter.
- (c) Student records shall contain only [such] information [as] **that** is relevant to the education of the student and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record.
- (d) The district board of education shall provide annual, written notification to parents, adult students, and emancipated minors of their rights in regard to student records and student participation in educational, occupational, and military recruitment programs. Copies of the applicable State and Federal laws and [local] **district board of education** policies shall be made available upon request. [District] **The district** board[s] of education shall make every effort to notify parents and adult students in their dominant language.
- (e) [A nonadult] **Nonadult** students may assert rights of access only through [his or her] **their** parent(s). However, nothing in this subchapter shall be construed to prohibit certified

school personnel from disclosing, at their discretion, student records to nonadult students or to appropriate persons in connection with an emergency, if [such knowledge] **the information contained in the record** is necessary to protect the health or safety of the student or other persons.

- (f) The parent or adult student shall have access to [his or her own] **the student's** records and have access to, or be specifically informed about, only [that] **the** portion of another student's record that contains information about [his or her child or himself or herself] **the student**.
- (g) Each district board of education shall establish written policies and procedures for student records that:
 - 1. Guarantee access to persons authorized under this subchapter within 10 days of a request, but prior to any review or hearing conducted in accordance with N.J.A.C. 6A;
 - 2. Assure security of the **student** records;
 - 3. Enumerate and describe the student records collected and maintained by the district board of education;
 - 4. Provide for inclusion in a student record any educationally relevant information provided by the parent or adult student;
 - 5. Allow for release of school contact directory information for official use, as defined in N.J.A.C. 6A:32-7.2;
 - 6. Provide the parent or adult student a 10-day period to submit to the chief school administrator a written statement prohibiting the [institution from including] **inclusion of** any or all types of information about the student in any student information directory before allowing access to [such] **the** directory and school facilities to educational, occupational, and military recruiters pursuant to N.J.S.A.

18A:36-19.1 and P.L. [107-110] **114-95**, § [9528] **8528**, Armed Forces Recruiter Access to Students and Student Recruiting Information of the [No Child Left Behind Act of 2001] **Every Student Succeeds Act of 2015**;

7. Provide, pursuant to (b) above, the parent or adult student a 10-day period to submit to the chief school administrator a written statement to exclude information from any school directory for official use;
 8. Assure limited access to student records by secretarial and clerical personnel pursuant to N.J.A.C. 6A:32-7.5;
 9. Provide for the access and security of student records maintained in [a computerized] **an electronic** system; and
 10. Maintain the confidentiality of all student records [with] **containing the** name, Social Security number, address, and telephone number information, or [use] the [substitute] address for certified participants in the Address Confidentiality Program pursuant to N.J.A.C. [5:61] **3A:71**.
- (h) All anecdotal information and assessment reports collected on a student shall be dated and signed by the individual who originated the data.
- (i) The chief school administrator, or [his or her] **the chief school administrator's** designee, shall require all [permitted] student records of currently enrolled students to be reviewed annually by certified school personnel to determine the education relevance of the [material] **information** contained therein. The reviewer shall cause [data] **information** no longer descriptive of the student or educational program to be deleted from the record[s], except that prior notice shall be given for [classified] students **with disabilities** in accordance with

N.J.A.C. 6A:14, Special Education. [Such] **The deleted** information shall be disposed of and not be recorded elsewhere. No record of any such deletion shall be made.

- (j) No liability shall be attached to any member, officer, or employee of any district board of education permitting access or furnishing student records in accordance with this subchapter.
- (k) When the parent's or adult student's dominant language is not English or the parent or adult student is deaf, the district board of education shall provide interpretation of the student records in the dominant language of the parent or adult student.
- (l) Student health records shall be maintained separately from other student records. Student health records also shall be [handled] **maintained** according to the requirements of this subchapter until such time as graduation or termination, whereupon the health history and immunization record shall be removed from the student's health record and placed in the student's mandated record.

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

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

[(b)] (c) [To exclude any information from the school contact directory for official use, the] A parent, adult student, or emancipated minor shall notify, **in writing**, the district board of education [in writing] **of their request to exclude any information from the school contact directory for official use.**

6A:32-7.3 Mandated student records

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

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

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

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

- (a) The chief school administrator, or [his or her] **the chief school administrator's** designee, shall be responsible for the security of student records maintained in the school district and shall devise procedures for assuring that access to [such] **student** records is limited to authorized persons.
- (b) [School districts] **District boards of education** may store all [documents] **student records** either electronically or in paper format.
 - 1. When **student** records are stored electronically, proper security and backup procedures shall be administered.
- (c) Student health records, whether stored on paper or electronically, shall be maintained [separately from other student records, until such time as graduation or termination whereupon the health history and immunization record shall be removed from the student's health record and placed in the student's mandated record] **in accordance with N.J.A.C. 6A:32-7.1(I).**
- (d) Records shall be accessible during the hours in which the school program is in operation.
- (e) Mandated student records required as part of programs established through State-administered entitlement or discretionary funds from the U.S. Department of Education shall be maintained for a period of five years after **a student's** graduation[,] **or** termination from the school district, **or to** age 23, whichever is longer[, and]. **The mandated student records** shall be disposed of in accordance with N.J.S.A. 47:3-15 et seq.
- (f) A district board of education that establishes a website shall not disclose any personally identifiable information about a student, in accordance with N.J.S.A. 18A:36-35.

6A:32-7.5 Access to student records

- (a) Only authorized organizations, agencies, or persons, as defined in this section, shall have access to student records, including student health records.
- [(b) Each district board of education shall control access to, disclosure of, and communication regarding information contained in student health records to assure access only to people permitted by Federal and State statute and regulations or stated in (e) below.]
- [(c)] **(b)** The district board of education may charge a reasonable fee for reproduction of student records, not to exceed the schedule of costs set forth [in] at N.J.S.A. 47:1A-5, provided that the cost does not effectively prevent [the] parents or adult students from exercising their rights under this subchapter or other Federal and State rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14.
- (c) Each district board of education shall control access to, disclosure of, and communication regarding information contained in student health records to assure access only to people permitted by Federal and State statute and regulations or as stated at (e) below.**
- (d) Access to, and disclosure of, a student health record shall meet the requirements of the Family Education Rights and Privacy Act (**FERPA**), **20 U.S.C. § 1232g and 34** [C.F.R.] **CFR Part 99** [(FERPA)].
- (e) [Authorized organizations] **Organizations**, agencies, and persons **authorized to access student records** shall include only the following:
1. The student who has the written permission of a parent and the parent of a student under the age of 18, **regardless of** whether the child resides with the parent, except [per] **pursuant to** N.J.S.A. 9:2-4;

- i. The place of residence shall not be disclosed; and
 - ii. Access shall not be provided if denied by a court;
2. Students at least 16 years of age who are terminating their education in the school district because they will graduate secondary school at the end of the term or no longer plan to continue their education;
3. An adult student [and] **and/or a** parent who has the written permission of an adult student, except that the parent shall have access without **the adult student's** consent [of the student], as long as the **adult** student is financially dependent on the parent and enrolled in the public school system, or if the **adult** student has been declared legally incompetent by a court of appropriate jurisdiction. The parent of [the] **a** financially dependent adult student may not disclose information contained in the adult student's record to a second or third party without the **adult student's** consent [of the adult student];
4. Certified school district personnel who are assigned educational responsibility for the student shall have access to the general student record but not to the student health record except under conditions permitted in N.J.A.C. 6A:16-2.4;
5. Certified educational personnel who have assigned educational responsibility for the student and who are employed by agencies listed below shall have access to the general student record, but not to the student health record, except under conditions permitted [in] **at** N.J.A.C. 6A:16-2.4:
 - i. An approved private school for [the disabled] **students with disabilities**;
 - ii. A State facility;

- iii. Accredited nonpublic schools in which students with [educational] disabilities have been placed [according] **pursuant** to N.J.S.A. 18A:46-14; or
 - iv. Clinics and agencies approved by the Department;
6. To fulfill its legal responsibility, a district board of education shall have access through the chief school administrator, or [his or her] **the chief school administrator's** designee, to information contained in a student's record. Information shall be discussed in executive session, unless otherwise requested by the parent or adult student;
7. Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to portions of the record to the extent necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to student files in which such staff are directed to enter or record information, and shall cease when the specific assigned task is completed;
8. Accrediting organizations to carry out their accrediting functions;
9. The Commissioner and Department staff members who are assigned responsibility that necessitates the review of such records;
10. Officials of other district boards of education within the State or other educational agencies or institutions where the student is placed, registered, or seeks to enroll, subject to the following conditions:
- i. Original mandated student records that schools have been directed to compile by New Jersey statute, regulation, or authorized administrative directive shall be forwarded to the receiving school district, **agency, or institution** with written notification to the parent or adult student;

- ii. Original mandated student records that a district board of education has required shall be forwarded to the receiving school district, **agency, or institution** only with the written consent of the parent or adult student, except where a formal sending-receiving relationship exists between the school districts;
 - iii. All records to be forwarded, including disciplinary records as specified [in] **at** N.J.S.A. 18A:36-19a, shall be sent to the chief school administrator [or his or her designee] of the school district to which the student has transferred, **or the chief school administrator's designee**, within 10 school days after the transfer has been verified by the requesting school district;
 - iv. The chief school administrator, or [his or her] **the chief school administrator's** designee, shall request, in writing, all student records from the school district of last attendance within two weeks from the date that the student enrolls in the new school district;
 - v. Upon request, the chief school administrator [or his or her designee] of the school district of last attendance, **or the chief school administrator's designee**, shall provide a parent(s) or an adult student with a copy of the records disclosed to other educational agencies or institutions; and
 - vi. Proper identification, such as a certified copy of the student's birth certificate or other proof of the [child's] **student's** identity pursuant to N.J.S.A. 18A:36-25.1, shall be requested at the time of enrollment in a new school district;
11. Officials of the United States Department of Education assigned responsibilities that necessitate review of such records;

12. Officers and employees of a State agency responsible for protective and investigative services for students [referred to the agency] pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, district boards of education shall ask the State agency for its cooperation in sharing the findings of an investigation;
13. Agency caseworkers or other representatives of a State or local child welfare agency who have the right to access a student's case plan when the agency or organization is legally responsible, in accordance with State law, for the care and protection of the student, consistent with 20 U.S.C. § 1232g(b)(1)(L).
14. Organizations, agencies, and persons from outside the school if they have the written consent of the parent or adult student. Organizations, agencies, and persons shall not transfer student record information to a third party without the written consent of the parent or adult student;
15. Organizations, agencies, and individuals outside the school, other than those specified in this section, upon the presentation of a court order; and
16. Bona fide researchers who explain to the chief school administrator the nature of the research project and the relevance of the records sought. [Researchers also shall satisfy] **Prior to the release of records to a researcher**, the chief school administrator, or [his or her] **the chief school administrator's** designee, **shall receive from the researcher written assurance** that the records will be used under strict conditions of anonymity and confidentiality. [Such assurance shall be received in writing by the chief school administrator prior to the release of information to the researcher.]

- (f) Nothing in this section shall be construed to prohibit school personnel from disclosing information contained in the student health record to students or adults in connection with an emergency, if such knowledge is necessary to protect the immediate health or safety of the student or other persons.
- (g) In complying with this section, [individuals] **district boards of education and charter school and renaissance school project boards of trustees** shall adhere to the requirements pursuant to [N.J.S.A. 47:1A-1 et seq.,] the Open Public Records Act (OPRA), **N.J.S.A. 47:1A-1 et seq.**, and [20 U.S.C. §1232g; 34 CFR Part 99,] the Family Educational Rights and Privacy Act (FERPA), **20 U.S.C. § 1232g; 34 CFR Part 99.**
- 1. When responding to OPRA requests from any party, including parties other than those listed at (e) above, a district board of education or charter school or renaissance school project board of trustees may release, without consent, records removed of all personally identifiable information, as such documents do not meet the definition of a student record. Before making any release, the district board of education or charter school or renaissance school project board of trustees shall have made a reasonable decision that a student's identity cannot be determined whether through single or multiple releases, or when added to other reasonably available information.**

6A:32-7.6 Conditions for access to student records

- (a) All authorized organizations, agencies, and persons defined in this subchapter shall have access to [the records of] a student **record**, subject to the following conditions:
1. No student record shall be altered or disposed of during the time period between a request to review the record and the actual review of the record.

2. Authorized organizations, agencies, and persons from outside the school whose access requires the consent of parents or adult students shall submit to the chief school administrator, or [his or her] **the chief school administrator's** designee, the request in writing, together with any required authorization.
3. The chief school administrator, or [his or her] **the chief school administrator's** designee, shall be present during the period of inspection to provide interpretation of the records, where necessary, and to prevent their alteration, damage, or loss. In every instance of inspection of student records by persons other than parents, students, or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the student record of the name(s) of persons granted access, the reason access was granted, the time and circumstances of inspection, the records [studied] **inspected**, and the purposes for which the data will be used.
4. Prior to disclosure of student records to organizations, agencies, or persons outside the school district pursuant to a court order, the district board of education shall give the parent or adult student at least three days' notice of the name of the requesting agency and the specific records requested unless otherwise judicially instructed. [Such] **The** notification shall be provided in writing, if practicable. Only records related to the specific purpose of the court order shall be disclosed.
 - i. Notice to the parent shall not be required when [he or she] **the parent** is party to a court proceeding involving child abuse and neglect or dependency matters, consistent with 20 U.S.C. § 1232g(b)(2)(B).
5. A record may be withheld from a parent or from an adult student only when the district board of education obtains a court order or is provided with evidence that

there is a court order revoking the right to access. Only that portion of the record designated by the court order shall be withheld. When the district board of education has, or obtains, evidence of such court order, the parent or adult student shall be notified in writing within five days of [his or her] **the** request that access to the record has been denied and that the person has the right to appeal the decision to the court issuing the order.

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

- (a) Student records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, [impermissible] **impermissible** disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons. The parent or adult student may [seek to] **request**:
1. [Expunge] **Expungement of** inaccurate, irrelevant, or otherwise improper information from the student record;
 2. [Insert] **Insertion of** additional data, as well as reasonable comments [as to] **regarding** the meaning and/or accuracy of the **student** record[s]; [and/or]
 3. [Request an] **The** immediate stay of disclosure pending final determination of the challenged procedure as described in this subchapter[.]; **and/or**
 4. **Immediate access to student records for organizations, agencies, and persons denied access pending final determination of the challenged procedure, as described in this subchapter.**
- (b) To request a change in the **student** record or to request a stay of disclosure pending final determination of the challenged procedure, a parent or adult student shall notify, in writing, the chief school administrator of the specific issues relating to the student record.

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

student record, as long as the contested portion of the **student** record is maintained. If the contested portion of the **student** record is disclosed to any party, the statement commenting upon the information shall also be disclosed to that party.

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

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

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

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

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

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

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

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

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

Subchapter 8. Student Attendance and Accounting

6A:32-8.1 School register

- (a) This subchapter applies to all district boards of education, **charter schools, renaissance school projects, approved private schools for students with disabilities**, and private agencies that provide educational services by means of public funds. **Throughout this subchapter, unless otherwise indicated, “district board of education” refers to the governing body of each of the five types of agencies.**
- (b) District boards of education shall [be required to] carefully and accurately track enrollment and attendance of all students in a manual school register format or in an electronic format of the school[’s] **district’s** choosing.
- (c) The Commissioner [shall] **will** issue and publish on the Department’s website [school register] guidance for recording student attendance in all public schools of the State operated by district boards of education, except adult high schools.
- (d) Student attendance shall be recorded in the school register during school hours on each day [school is] in session, **pursuant to N.J.A.C. 6A:32-8.3. An employee designated by the chief school administrator shall keep in the school register, attendance of all students, and shall maintain the attendance records in accordance with this subchapter and the guidance at (c) above.**
- [(e) School registers shall be kept for students attending preschool, kindergarten, grades one through five, grades six through eight, grades nine through 12, each preschool class for the disabled, each class for the disabled, shared-time classes for regular students, shared-time classes for students with disabilities, full-time bilingual education programs and vocational day programs, and summer schools operated by district boards of education.]
- [(f)] **(e)** A student who has been placed on home instruction shall have [his or her] **their** attendance status recorded on the regular register for the program in which the student is

enrolled. [For] **The student shall be marked absent for** the period beginning the first day the student is unable to attend school and ending the day before the first instructional day at the student's place of confinement[, the student shall be marked absent]. [No absences] **Absences shall not** be recorded for the student while on home instruction, [providing] **provided** the hours of instruction are no less than required by N.J.A.C. 6A:14-4.8 and 4.9 **and 6A:16-10.1 and 10.2**. The number of possible days [of enrollment] **in membership** for a student on home instruction shall be the same as for other students in the program in which the student is enrolled.

6A:32-8.2 School enrollment

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

of charge. The district board of education may enroll students under the following legal school ages:

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

classes or schools of a school district having varying lengths of terms shall be the sum of the average daily attendance obtained for the individual classes or schools.]

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

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

3. The maximum enrollment for a kindergarten class shall be 25 students per teacher and 21 students in an former Abbott school districts, in accordance with the *Abbott v. Burke* decision, *Abbott v. Burke*, 153 N.J. 480 (1998) ("*Abbott V*"); 177 N.J. 578 (2003) ("*Abbott X*"), and N.J.A.C. 6A:13-3.1 and 3.2 and 6A:13A-3.1(d). The executive county superintendent of schools may give permission to increase the number of students in a non-Abbott classroom provided another teacher, an auxiliary teacher, or a teacher aide is employed full-time to provide for the increased size.
- (d) A day of attendance shall be one in which a student is present for the full day under the guidance and direction of a teacher while school is in session. Whenever over-crowded conditions make it necessary to hold two separate sessions with a different group of students in each session, a student attending for all of either session shall be regarded as having attended for the full day. An excused absence for any reason shall not be counted as a day of attendance in the school register.
- (e) A half-day class shall be considered the equivalent of a full day's attendance only if in session for four hours or more, exclusive of recess periods or lunch periods.
- (f) A record of the attendance of all students on roll in a school register shall be kept each day that school is in session by a teacher or other authorized person. It shall be the duty of this person to keep the attendance records according to these rules and the specific instructions issued by the Commissioner.
- (g) No student shall be recorded as present unless the school is in session and the student so recorded is under the guidance and direction of a teacher in the teaching process.

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

6A:32-8.4 Student attendance

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

the attendance records according to this subchapter and the guidance issued by the Commissioner in accordance with N.J.A.C. 6A:32-8.1(c).

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

6. Closure of a busing school district that prevents a student from having transportation to the receiving school.

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

6A:32-8.5 Average daily attendance

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

6A:32-8.6 Absentee and chronic absenteeism rates

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

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

Subchapter 9. Athletics Procedures

6A:32-9.1 General requirements

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

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

Subchapter 10. Summer School Sessions

6A:32-10.1 General

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

6A:32-10.2 Costs and tuition

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

6A:32-10.3 Staffing

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

6A:32-10.4 Student assignment and credit

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

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

Subchapter 11. Withdrawal from Regional School Districts

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

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

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

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

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

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

- (a) The executive county superintendent shall investigate the advisability of the withdrawal of the requesting constituent district from, or the dissolution of, the regional school district upon receipt of the resolution(s) and accompanying data pursuant to N.J.A.C. 6A:32-11.1. Within 60 days after receipt of [such] **the** request, the executive county superintendent shall issue a report, in accordance with N.J.S.A. 18A:13-52 or 18A:13-67, to governing bodies of the municipalities constituting the regional school district and the board of education of the regional school district. If the executive county superintendent's report addresses the withdrawal of a constituent school district(s) from, or the dissolution of, a [limited purpose] **limited-purpose** regional school district, the report shall also be issued to the **district** boards of education of the constituent school districts. When the executive county superintendent has begun [such] **the** investigation, no action shall be taken upon a subsequent request from another constituent school district or municipality of the same regional school district until the investigation, report, and action have been completed. The report shall be based on data [supplied by the petitioning school district(s) or municipality(ies),] including, but not limited to, the following:
1. A general description of the regional school district, including the number of constituent school districts, school buildings, area of the total school district, and area of the withdrawing school district or municipality;
 2. Enrollment data, including the number of students enrolled as reported by grade on the Annual Application for State School Aid and estimated projected enrollment, by

grade level, for the succeeding five school years for both the withdrawing school district or municipality and the remaining regional school district. The estimated projected enrollments shall be based on growth factors using average percentages for the last three school years and a review of municipal planning documents (master plan elements, zoning maps), including any annual reports or summaries of land-use approvals within the past five years;

3. Enrollment data, by grade level, showing the racial composition of the present regional student population and the resulting racial composition for both the withdrawing school district or municipality and the remaining regional school district if withdrawal were to be approved;
4. The operating expenses of the regional school district for the present school year including the distribution of [such] current operating expenses among the constituent school districts or municipalities;
5. The equalized valuation of each constituent school district or municipality of the regional school district as set forth in N.J.S.A. 18A:7F-45;
6. The average equalized valuations of the real property of each constituent school district or municipality of the regional school district as set forth in N.J.S.A. 18A:24-1 et seq.;
7. The borrowing margin of each constituent school district or municipality of the regional school district as determined by N.J.S.A. 18A:24-1 et seq., and the revised borrowing margin of each constituent school district or municipality and the withdrawing school district or municipality, if approval were to be granted;

8. The apportionment by dollar amounts and percentages of debt service for the current school year among all the constituent school districts or municipalities of the regional school district;
 9. The replacement costs of school buildings, additions, grounds, furnishings, and equipment of the regional school district, and the replacement cost of any school building, additions, grounds, furnishings, and equipment of the regional school district situated in the withdrawing school district or municipality. [School] **The Department will calculate the school** building replacement costs [will be calculated by the Office of School Facilities] as follows:
 - i. The current overall cost per square foot for school construction in New Jersey, updated in the fall of each year, will be multiplied by the gross area of the building. The figure shall include construction costs, moveable and built-in furniture and equipment, and fees; and
 - ii. Site costs will be excluded since they are already included under N.J.A.C. 6A:26-7.1(a).
 10. The amount of indebtedness, if any, to be assumed by the withdrawing constituent school district or municipality; **and**
 11. The distribution of assets and liabilities of the existing regional school district and remaining regional school district following withdrawal in the manner provided by N.J.S.A. 18A:8-24[;].
- (b) The executive county superintendent report shall include, but not be limited to, the following:**

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

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

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

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

6A:32-11.3 Special school election

(a) If the application is granted upon completion of the procedures [contained in] at N.J.S.A. 18A:13-54 to 56 or 18A:13-69 to 71, the executive county superintendent shall confer with the regional district board of education and the boards of education of the constituent school districts of a [limited purpose] **limited-purpose** regional school district or the constituent municipal governing bodies of an [all purpose] **all-purpose** regional school district and fix a day and time for holding a special school election, in accordance with N.J.S.A. 18A:13-57 or 18A:13-72.

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

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

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

6A:32-11.5 Effective date of withdrawal

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

[Subchapter 12. Student Behavior]

[6A:32-12.1 Student attendance]

- [(a) The average daily attendance rate for each school district shall average 90 percent or higher as calculated for the three years prior to the school year in which the school district is monitored.

- (b) Each school district with a three-year average below 90 percent shall develop a district improvement plan to improve student attendance, pursuant to N.J.A.C. 6A:30-5.2.]

Subchapter 12. Kindergarten

6A:32-12.1 Kindergarten programs

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

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

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

- (a) This section applies to all district boards of education, charter school and renaissance school project boards of trustees, and private agencies that provide educational services by means of public funds. Throughout this section, unless otherwise indicated, “district board of education” refers to the governing body of each of the four types of agencies.**
- (b) If the State or local health department determines that it is advisable to close, or mandates closure of, the schools of a school district due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days, the chief school administrator shall have the authority to implement the school district’s program of virtual or remote instruction, pursuant to N.J.S.A. 18A:7F-9.**
 - 1. If implemented by the chief school administrator, the school district’s program of virtual or remote instruction shall be provided to an enrolled student, whether a general education student in preschool through grade 12 or a student with a disability aged three to 21.**

- (2) **A description of the communication process with families of ELLs, including providing translation materials, interpretative services, and literacy level appropriate information;**
 - (3) **A description of the use of alternate methods of instruction (that is, 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) **A description of 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 (that is, refugee, asylee);**
- iv. **Account 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, how a student’s attendance will factor into promotion, retention, graduation, discipline, and any other decisions that will reflect the student’s performance;**
- v. **Describe how the school district is communicating with the family when a student is not participating in online instruction and/or submitting assignments;**
- vi. **Include a plan for the continued safe delivery of meals to eligible students;**

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

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

- (a) If the State or local health department determines that it is advisable to close, or mandates closure of, an approved private schools for students with disabilities (APSSD) due to a declared state of emergency, declared public health emergency, or a directive by the appropriate health agency or officer to institute a public health-related closure for more than three consecutive school days, the full-time non-teaching principal shall have the authority to implement the APSSD’s Department-approved program of virtual or remote instruction.**
- (b) The APSSD may apply one or more days of virtual or remote instruction to qualify as a day of instruction for the purposes of calculating tuition pursuant to N.J.S.A. 18A:46-21.1.a, under the following conditions:**
- 1. Virtual or remote instruction is provided to students on the day(s) that some or all of the programs of instruction of the APSSD 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;**
 - 3. The APSSD program of virtual or remote instruction shall include the Commissioner-established criteria at N.J.A.C 6A:32-13.1(c)3; and**
 - 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.

- (c) If provided under a Commissioner-approved program, student attendance for a day of virtual or remote instruction shall be accounted for in accordance with N.J.A.C. 6A:32-8.4 for the purposes of meeting State and local graduation requirements, the awarding of course credit, and other matters as determined by the Commissioner.**
- (d) The virtual or remote instruction shall be consistent with the student’s individualized education program (IEP) to the extent appropriate and practicable and shall meet the New Jersey Student Learning Standards.**

Subchapter 14. Voter Registration

6A:32-14.1 Distribution

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

6A:32-14.2 Statement of assurance

The chief school administrator of a public school district, the administrator of a nonpublic school with high schools, or the head administrator of a private agency that provides educational services for high schools by means of public funds shall sign a statement of assurance and submit it to the

executive county superintendent no later than June 30 each year. The statement of assurance shall affirm the distribution of voter registration forms, a summary of voter registration eligibility requirements, and materials describing the role of a citizen and the importance of voting.