

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

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

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

This comment and response form contains comments from the September 8, 2021, meeting of the State Board of Education when the rulemaking was considered at Proposal Level.

Topic: Education for Homeless Children and Students in State Facilities

Meeting Date: March 2, 2022

Code Citation: N.J.A.C. 6A:17

Level: Adoption

Division: Educational Services

Completed by: Office of Supplemental Educational Programs

Summary of Comments and Agency Responses:

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

1. Elizabeth Athos, Esq., Senior Attorney, Education Law Center
2. Mary Ciccone, Director of Policy, Disability Rights New Jersey

1. **Comment:** The commenter stated that N.J.A.C. 6A:17, as proposed, defines "resource family care" as synonymous with "foster care" under Federal law. The commenter also stated that "foster care," under the ESSA, is a broad term that includes individual family homes and also group homes, residential facilities, child care institutions, and emergency shelters. The commenter further stated that the definitions of "out-of-home placement" and "placement" in the Division of Child Protection and Permanency's (DCP&P) rules at N.J.A.C. 3A:11-1.3 similarly indicate that placements are made in a wide variety of settings (for example, specialized residential settings providing drug and alcohol treatment). The commenter also stated that, when a student is placed in a specialized residential setting, and possibly receiving both therapeutic and educational services on site, the student's eventual discharge from that setting may necessitate a change in educational placement. The commenter suggested the Department amend N.J.A.C. 6A:17-4 to acknowledge that the decision-making process applicable to students being discharged from specialized group settings may depart from the general assumption that remaining in the school attended while placed ("school of origin") is preferable. **(1)**

Response: The Department disagrees that the commenter's suggested amendment is necessary. The best interest determination protocols at N.J.S.A. 30:4C-26b include educational placement considerations.

2. **Comment:** The commenter stated that the proposed readoption with amendments at N.J.A.C. 6A:17 will have some benefits, specifically the clarification of tuition responsibility for homeless youth and the creation of a new subchapter focusing on children in resource family care. The commenter expressed concern that other parts of the

readoption do not efficiently effectuate, and may even harm, the intention to provide a thorough, efficient, and equitable education to children at risk for not receiving a public education. (2)

Response: The Department appreciates the commenter’s support for the proposed readoption and appreciates the commenter’s concern for the needs of at risk children. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023 and invites the commenter to provide additional input at that time.

3. **Comment:** The commenter stated that N.J.A.C. 6A:17, as proposed for readoption with amendments, does not address youth involved in the juvenile justice system who face difficulty accessing consistent education from their guardian’s school district of residence. The commenter stated that juvenile justice-involved youth face frequent interruptions in education as they are placed at different locations, such as detention-alternative shelters, out-of-home treatment facilities, or home on an ankle monitor. The commenter also stated that guardian’s school district of residence is responsible for providing educational opportunities to youth in detention alternatives, but they often do not receive education from their residential placement. The commenter further stated that youth in this situation are excluded from the protections at N.J.A.C. 6A:17-3, which addresses only educational programs provided by the Department of Corrections, the Department of Children and Family Services, the Department of Human Services, and the Juvenile Justice Commission. The commenter stated that the excluded youth often experience large gaps in school enrollment and difficulty receiving appropriate education services.

The commenter acknowledged that youth in detention alternatives arguably fit the definition of homelessness under N.J.A.C. 6A:17-2.2(a)1, which includes all children and youth residing in a “publicly or privately operated shelter designed to provide temporary living accommodations.” The commenter requested that the Department amend N.J.A.C. 6A:17-2.2(a) to expressly include youth in detention alternatives -- or propose a separate subchapter for this population -- to provide coordinated support for students placed out of home by the juvenile justice system and to ensure school district responsibility for efficient and equitable education of the youth. The commenter stated that providing clear procedures for immediate enrollment, transportation of students, exchange of records, payment of tuition, and coordination through a designated “point of contact” would further operationalize New Jersey’s requirement to provide a thorough and efficient education to all students with little added expenditures because of the existing framework of N.J.A.C. 6A:17. (2)

Response: The Department appreciates the commenter’s concern for youth involved in the juvenile justice system but disagrees with the commenter’s suggestion that youth in detention alternatives fit the definition of homeless under N.J.A.C. 6A:17-2.2(a). As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will have to consider the suggestion for a separate subchapter to address the needs of students placed in “detention alternatives” as part of a new rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

4. **Comment:** The commenter suggested that the definition of “unaccompanied youth” at N.J.A.C. 6A:17-1.2 be amended so it is clear that the term is synonymous with “youth,” as added throughout the chapter, if that is the Department’s intention. (1)

Response: “Youth” and “unaccompanied youth” are not synonymous terms. While the McKinney-Vento Homeless Assistance Act (Act) does not provide a definition for “youth,” the term is used throughout the Act in conjunction with “child” to indicate persons to whom the law applies for the purposes of education. The Act’s regulations define “unaccompanied youth” as “a homeless child or youth not in the physical custody of a parent or guardian” (see 42 USC § 11434a(6)). Two conditions must be present for a child or youth to be considered an unaccompanied youth under the Act: 1) the child’s or youth’s living arrangement meets the Act’s definition of homeless; and 2) the child or youth is not in the physical custody of a parent or guardian. The Department’s use of the two terms is consistent with the Federal regulations. Therefore, the Department does not agree that N.J.A.C. 6A:17-1.2 needs to be amended.

5. **Comment:** The commenter stated that the summary of the proposed amendments at N.J.A.C. 6A:17-2.2 incorrectly refers to N.J.A.C. 6A:17-2.5 instead of N.J.A.C. 6A:17-2.2. **(1)**

Response: The Department thanks the commenter for identifying the error. The correction has been made to the summary that appears after this comment and response form.

6. **Comment:** The commenter suggested an amendment at N.J.A.C. 6A:17-2.2(a) to add “or youth” after “when the child.” **(1)**

Response: The Department thanks the commenter for the suggestion. The language was already added by the Office of Administrative Law (OAL) during its review of the notice of proposal prior to publication in the New Jersey Register (53 N.J.R. 1757(a)).

7. **Comment:** The commenter requested amendments at N.J.A.C. 6A:17-2.4(b) because “homeless child or youth” implies that a determination has already been made that the child or youth is homeless. The commenter stated the proposed amendments place the power to make the initial determination of homelessness exclusively on the school district of residence. The commenter requested that the Department replace the beginning of the rule with “[w]hen a school district liaison is notified or otherwise becomes aware that a child or youth potentially classified as homeless within the meaning of N.J.A.C. 6A:17-2.2 resides in the liaison’s school district.” **(1)**

Response: The Department thanks the commenter for the suggestion. As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

8. **Comment:** Referencing the addition of “youth” throughout the chapter, the commenter recommended a review of New Jersey regulations to ensure every instance in which rights otherwise exercised by a parent would belong to an unaccompanied youth under the McKinney-Vento Homeless Assistance Act to ensure consistency with the Federal law. As an example, the commenter stated that N.J.A.C. 6A:17-2.5(b)1 refers to the “wishes of the homeless child’s parent” and is contrary to Federal statute, which also looks to the request of any unaccompanied youth in making enrollment decisions. **(1)**

Response: The Department appreciates the commenter’s recommendations. As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

9. **Comment:** The commenter expressed concern with the proposed amendments at N.J.A.C. 6A:17-2.7(a) and (b) that will change the timeline to determine disputes about a child’s or youth’s homeless status and the school district of enrollment. The commenter stated that existing rules require the Homeless Education Coordinator to determine homelessness status “immediately” and the executive county superintendent to determine disputes regarding district of residence “immediately, if possible, but no later than within 48 hours.” The commenter also stated that the existing requirement for a determination immediately, or within 48 hours, is consistent with ESSA Title IX, Part A, section 9102 (3)(E), and Part B, section 11432(g)(3)(E), which require the dispute resolution process to be carried out “as expeditiously as possible.” The commenter further stated that changing both timelines to “within five business days of the receipt of the dispute” will unnecessarily delay educational stability and is inconsistent with the Federal intention that disputes are resolved “immediately” or “as expeditiously as possible.”

The commenter also stated that Department’s stated purpose for the amendments is to make the timeline for response “more reasonable and consistent with current practice,” but the Department has not presented evidence for why immediate determination, or at least determination within 48 hours, is unpracticable or unreasonable. The commenter further stated that although students are legally required to be placed in school while the dispute is pending; consistent current practice indicates that students are often not given schedules, services, or supports while the disputes are addressed. The commenter also stated that the proposed amendments to lengthen the timeline risks an increased delay and harm to students, especially students with disabilities, by allowing longer interruption of education services without reliance on data showing that delay is administratively necessary. (2)

Response: The Department agrees with the commenter. The Department proposes at N.J.A.C. 6A:17-2.7(a) and (b) to not adopt the amendments that would have replaced “immediately” and “immediately, if possible, but no later than 48 hours,” respectively, with “within five business days of receipt of the dispute.”

- (a) When a dispute occurs regarding the determination of homelessness or the determination of the school district of enrollment made by the school district of residence, the chief school administrator(s), or **the chief school administrator’s** designee(s), of the involved school district(s) or the child’s **or youth’s** parent(s) shall immediately notify the executive county superintendent[, who, in]. **In** consultation with the Department’s McKinney-Vento Homeless Education Coordinator, or [his or her] **the coordinator’s** designee, [immediately] **the executive county superintendent** shall **immediately** decide the child’s **or youth’s** status [[**within five business days of receipt of the dispute**]]. If a dispute remains between the parent and the involved school district(s) following the executive county superintendent’s determination, the parent or the involved

district board(s) of education may appeal to the Commissioner for determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

- (b) When a school district designated as the school district of residence disputes its designation as the school district of residence, or where no designation can be agreed upon by the involved school districts, the chief school administrator(s), or **the chief school administrator's** designee(s), of the involved school districts shall immediately notify the executive county superintendent[, who]. **The executive county superintendent** shall make a determination [immediately, if possible, but no later than] **immediately, if possible, but no later than** within [48 hours] [[**five business days of receipt of the dispute**]] **48 hours** and, when necessary, in consultation with the Department's Homeless Education Coordinator, or the Coordinator's designee.

10. **Comment:** The commenter suggested an amendment at N.J.A.C. 6A:17-2.7(c) to delete "homeless" before "child or youth" to reflect that a dispute may exist as to homelessness. **(1)**

Response: The Department thanks the commenter for the suggestion. As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

11. **Comment:** The commenter expressed support for the proposed amendments at N.J.A.C. 6A:17-2.8 that clarify which school must pay tuition for a homeless student, the duration of that responsibility, and when the State assumes fiscal responsibility. The commenter stated that the proposed amendments will reduce harmful delays in students' receipt of education services that often are caused by disputes about payment of tuition and transportation. **(2)**

Response: The Department thanks the commenter for the support.

12. **Comment:** The commenter stated that the second sentence of N.J.A.C. 6A:17-2.8(a), as proposed for amendment, appears to suggest that a school district in which the parent has established a permanent residence would pay tuition to the school district of enrollment. The commenter stated that establishment of a permanent residence terminates homelessness and the student's ability to remain enrolled out-of-district, unless an exception applies such as remaining enrolled in the school district of residence until the end of a school year. The commenter requested that the second sentence of N.J.A.C. 6A:17-2.8(a) be replaced with the following: "At that time, the original school district of residence shall no longer pay tuition to the school district of enrollment. Where a parent

is deemed domiciled in another school district, that school district shall pay tuition to the school district of enrollment.” (1)

Response: The Department appreciates the commenter’s recommendations. As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

13. **Comment:** The commenter requested an amendment to the second sentence at N.J.A.C. 6A:17-2.8(b) to replace “school district of residence” with “school district in which the parent has established a permanent residence.” The commenter stated that it appears the latter language is what was intended by the proposed amendments. The commenter also stated that the requested change will avoid the confusion caused by the use of “school district of residence” since it also appears in the first sentence in reference to the district of residence while the family was still homeless. (1)

Response: The Department disagrees with the request to amend N.J.A.C. 6A:17-2.8(b). Families can be both homeless and residents of a school district but not yet permanent residents. The rule, as proposed for amendment, also aligns with N.J.S.A. 18A:38-1.d and 19.

14. **Comment:** The commenter suggested an amendment at N.J.A.C. 6A:17-2.8(c)3, as proposed for amendment, to delete “during the placement” because it does not appear in the cited statutory provisions and adds confusion. (1)

Response: As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will have to consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

15. **Comment:** The commenter stated that DCP&P may place students into settings classified as “State facilities” as defined at N.J.A.C. 6A:17-1.2 and covered under N.J.A.C. 6A:17-3. The commenter requested that the Department clarify the overlap between the regulations. (1)

Response: The Department thanks the commenter for the suggestion. As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

16. **Comment:** The commenter stated that the cross-reference to N.J.A.C. 6A:17-2.5(h) at N.J.A.C. 6A:17-4.2(a)2iv is an error and should be changed to N.J.A.C. 6A:17-4.4(c). (1)

Response: The Department agrees with the commenter and proposes to make this amendment upon adoption.

- iv. **Continued enrollment for the duration of placement in resource family care and a determination of whether children who are reunited with their parent(s) during the academic year can continue**

enrollment in the school district, in accordance with ESSA §

1112(c)(5) and N.J.A.C. 6A:17-[[2.5(h)]4.4(c).

17. **Comment:** The commenter suggested that N.J.A.C. 6A:17-3, Educational Programs for Students in State Facilities, be amended to also apply to students held in county juvenile detention centers across the State. The commenter stated that there are many more students attending school in county detention centers than in State facilities. The commenter also stated that, in 2017, 274 youth were committed to State facilities, but 2,442 youth were in county detention centers. The commenter further stated that the lack of inclusion of students in county juvenile detention centers at N.J.A.C. 6A:17-3 leads to a disconnect between the protections afforded to students detained in State facilities versus county facilities. The commenter also stated that amending the subchapter to apply to county juvenile detention centers is important because, in some situations, youth spend a year or more at county facilities. The commenter further stated that the seamless transition from the home school district to the detention center’s school program and back is a key component to protecting the educational rights of students in detention. **(1)**

Response: The Department maintains that amending N.J.A.C. 6A:17-3 is not necessary because the rules already apply to county juvenile detention centers. N.J.A.C. 6A:17-1.2 defines “State facility” as residential and day programs operated by, contracted with, or specified by the New Jersey Department of Human Services, the New Jersey Department of Corrections, the New Jersey Department of Children and Families, or the New Jersey Juvenile Justice Commission. Furthermore, N.J.S.A. 18A:7B-5 required the Juvenile Justice Commission’s Office of Education to develop, in consultation with the Commissioner of Education, appropriate standards for the provision of a thorough and efficient education by the county for county juvenile detention centers. The Department of Law and Public Safety’s regulations at N.J.A.C. 13:92-9.3(n) require that the juvenile detention facility employ education personnel to ensure the provision of programs and services pursuant to N.J.A.C.6A:17. Therefore, N.J.A.C. 6A:17 applies to county juvenile detention centers and no further changes are necessary.

18. **Comment:** The commenter stated that N.J.A.C. 6A:17-3 fails to place an affirmative obligation on local education agencies (LEAs) to reenroll students transitioning back from State facilities and county detention centers in a timely manner. The commenter stated N.J.A.C. 6A:17-3.6 requires State agencies to transfer educational records and progress reports to the LEA within 10 days of the student’s discharge and requires the school district of residence to “grant academic credit based on the appropriate documentation provided by the State agency for the program of study successfully completed in a State facility.” The commenter also stated that the rules do not contain an affirmative obligation to facilitate the process of reenrollment, a necessary first step for students to benefit from the academic credits earned while detained.

The commenter further stated that the Department recognized that youth leaving confinement face “barriers to school reentry in both reenrollment and reintegration” and that schools may be reluctant to reenroll students due to prior behavioral issues and issued guidance to assist LEAs in transitioning students from confinement back to local schools. The commenter also stated that although the guidance (New Jersey School Reentry Strategies to Support Students Returning to School After Confinement) includes many helpful suggestions that school districts can implement to ensure students are reenrolled and reintegrated into their home school districts, the guidance is a set of recommendations

that school districts can choose to act on and are not requirements imposing obligations. The commenter further stated that this information alone will not be enough to ensure that students who have experienced behavioral challenges or school issues will not remain at risk of being denied the right to education. (1)

Response: The Department is committed to providing resources for a student's successful transition from a State facility or juvenile detention center to their LEA. The Department, in conjunction with the State agencies, encourages students to transition to the most appropriate educational setting after release, which may be the LEA. If an adult student or guardian chooses to return to the LEA, the LEA must follow its procedures to either re-enroll a student released from a State agency or re-integrate a student released from a county juvenile detention center. Pursuant to N.J.S.A. 18A:38-4.1, the Department biannually reminds school districts of their obligation to enroll resident students in accordance with all applicable statutes and regulations. Therefore, the Department does not agree that changes are necessary.

19. **Comment:** The commenter urged the Department to set forth due process procedures for students in State facilities and county detention centers to protect the students' constitutional right to an education both within the State facility and upon return to the school district. The commenter stated that N.J.A.C. 6A:17-3 should set forth a procedure by which parents or students can contest an individualized program plan (IPP) as failing to comply with regulatory, statutory, or constitutional requirements. The commenter also stated that the regulations currently require that parents receive written notice of an IPP or its revision, but also allow implementation whether or not parental consent has been granted. The commenter further stated that the regulations fail to provide a procedure through which a parent can challenge the IPP as insufficient.

The commenter also stated that N.J.A.C. 6A:17-3 should ensure that any student returning to a school district from a State facility is afforded full due process if the school district seeks to place the student anywhere other than the general education program. The commenter referenced complaints that some districts place returning students in alternative education programs without providing notice of the reasons for the determination and a hearing to challenge the determination's appropriateness. The commenter further stated that the involuntary transfer to alternative schools is similar to an expulsion or suspension, which can also lead to an alternative school placement.

The commenter also stated that students facing expulsion or suspension prior to placement in an alternative school are afforded due process rights of notice and a hearing, but students facing involuntary transfers are denied similar rights. The commenter further stated that other states, such as New York, have recognized this discrepancy and created regulations that provide students facing involuntary transfers with due process rights that are comparable to the rights afforded to students facing disciplinary removals. The commenter also stated that students returning to home school districts from State facilities and county detention centers have already been identified by the Department as a cohort of students that school districts are more reluctant to reenroll. As such, the commenter stated that the students would benefit significantly from increased due process rights to prevent involuntary transfers to alternative schools resulting from unsubstantiated bias based on their history of justice involvement. (1)

Response: The Department disagrees that N.J.A.C. 6A:17 needs to be amended to provide a separate due process procedure for students in State facilities and juvenile detention centers because complaint processes already exist. An adult student or a

student's parent may utilize the Department's existing complaint processes to address any complaint that may arise. Pursuant to N.J.A.C. 6A:14, issues related to special education may be submitted to the Office of Special Education via [email](#). In accordance with N.J.A.C. 6A:3, issues not related to special education may be submitted to the Office of Controversies and Disputes via [email](#). Therefore, there is no need for an additional due process requirement at N.J.A.C. 6A:16.

- 20. Comment:** The commenter stated that N.J.A.C. 6A:22-3.2(h), which allows continued enrollment of a student in the event of a family crisis, requires school districts to advise parents of the risk of liability for transportation costs if their situation is not ultimately determined to meet the family crisis criteria. The commenter also stated that N.J.A.C. 6A:22-3.2(d), which cites N.J.A.C. 6A:17-2, contains no such warning for parents of students experiencing homelessness, suggesting that there is no risk of liability to parents irrespective of the outcome of a dispute under N.J.A.C. 6A:17-2.7(c). The commenter further stated that N.J.A.C. 6A:17-2.5(c)1 and 2.7(c) do not directly address parental liability but strongly suggest that parents bear no risk of liability for tuition or transportation costs associated with their child's enrollment in the chosen school district prior to resolution of any dispute under the regulations (including appeals), even if the dispute results in a finding that the child was not homeless.

The commenter also stated that caselaw reveals that a risk of liability does exist for parents whose children continue to attend school in their original school district after the family leaves the school district (under circumstances of hardship that may constitute homelessness) without the involvement of a homeless liaison and implementation of the procedures at N.J.A.C. 6A:17-2.5. The commenter also stated that the readoption with amendments of N.J.A.C. 6A:17-2 creates an opportunity to reconcile the rules with caselaw regarding ineligibility determinations and to clarify the issue of potential parental liability.

The commenter also suggested an amendment to the end of the second sentence at N.J.A.C. 6A:17-2.7(c) to add "and neither tuition nor transportation costs may be assessed against a parent or youth with respect to any period of enrollment governed hereunder." **(1)**

Response: The Department appreciates the commenter's recommendations. As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will have to consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

- 21. Comment:** The commenter expressed support for the proposed Subchapter 4, Educational Stability for Children in Resource Family Care, because of the overrepresentation of students with disabilities in the child welfare system and the disproportionately longer time they spend awaiting an appropriate resource family care placement. **(2)**

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

- 22. Comment:** The commenter stated that the Federal Every Student Succeeds Act (ESSA) contemplates that, while the state welfare agency is the final decision-maker in the event of a dispute regarding the best interest determination, school districts play a substantive role in making this determination in concert with the state welfare agency. The commenter also stated that the rules at proposed N.J.A.C. 6A:17-4, Educational Stability

for Children in Resource Family Care, suggest that the power to make a best interest determination lies exclusively with the Division of Child Protection and Permanency (DCP&P). The commenter further stated the proposed definition of “best interest determination” at N.J.A.C. 6A:17-1.2 refers only to DCP&P as the decider. The commenter also stated that school districts should be given more substantive responsibility in contributing to the best interest determination in furtherance of the goals of Federal law. The commenter recognized that N.J.S.A. 30:4C-26b may also need to be amended. (1)

Response: The Department cannot adopt the suggested amendment because it does not align with N.J.S.A. 30:4C-26b.

23. **Comment:** The commenter requested the Department amend the proposed regulations for students in resource family care at N.J.A.C. 6A:17-4 to cross-reference N.J.A.C. 6A:14, Special Education, similar to the regulations for homeless students at N.J.A.C. 6A:17-2.7(d). (1)

Response: The Department thanks the commenter for the suggestion. As N.J.A.C. 6A:17 is set to expire on March 9, 2022, the Department will consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.

24. **Comment:** The commenter suggested that all references to “parent or guardian” be changed to “parent” at N.J.A.C. 6A:17-4.4(c) and throughout the chapter because the definition of “parent” at N.J.A.C. 6A:17-1.2 includes “legal guardian.” (1)

Response: The Department thanks the commenter for the suggestion. The references to “guardian” at N.J.A.C. 6A:17-4.4(c) and many other places in the chapter were identified by the OAL during its review of the notice of proposal prior to publication in the New Jersey Register. The Department proposes at adoption to delete “or guardian” or “or guardian(s)” from the four remaining references in the proposed definition of “resource family care” and the existing definition of “unaccompanied youth” at N.J.A.C. 6A:17-1.2 and at N.J.A.C. 6A:17-2.5(a)1 and 3.2(c) as follows:

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

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

N.J.A.C. 6A:17-2.5(a)1

1. Enroll the homeless child **or youth** in the school district of residence to the extent feasible, except when doing so is contrary to the wishes of the homeless child's **or youth's** parent [[or guardian]];

N.J.A.C. 6A:17-3.2(c)

- (c) Attendance in educational programs is compulsory for all students, except for a student age 16 or above who may explicitly waive this right. For a student between the ages 16 and 18, a waiver is not effective unless accompanied by consent from a student's parent [[or guardian]]. A waiver may be revoked at any time by the former student.

- 25. Comment:** The commenter expressed concern that the proposed Subchapter 4 does not include children and youth awaiting foster care placement. The commenter stated that “resource family care” is defined at N.J.A.C. 6A:17-1.2 as “24-hour substitute care for children placed away from their parent(s) or guardian(s) and for whom DCP&P has placement and care responsibility,” but proposed N.J.A.C. 6A:17-4.1(a) states the purpose of the new subchapter is to ensure thorough and efficient education and provide educational stability of children “placed in resource family care”. The commenter also stated that “placed in resource family care” is a term of art commonly used to specify children who are assigned a resource family home. The commenter further stated that children awaiting placement, while technically under the care of DCP&P, are not considered to be “placed in resource family care.” The commenter expressed concern that the language limiting the scope of the new subchapter to children “placed” in resource family care will restrict the ability of children and youth in the care and custody of DCP&P who are awaiting placement to utilize the appointed education liaison and other protections provided by the proposed rules.

The commenter also stated that the proposed new subchapter removes children awaiting placement in resource family care from the definition of homelessness, which means that children who may not have the educational protections available to youth placed in resource family care will also not have the specific educational protections that are provided to homeless youth under the chapter. The commenter stated that removing the reference without explicitly including children awaiting resource family care placement in protections for children placed in resource family care puts students at risk of not receiving efficient and equitable education and will have a disproportionate impact on students with disabilities.

The commenter further stated that the exclusion of children and youth awaiting placement seems to be inadvertent the comment and response form dated August 4, 2021, states the following: “The proposed amendments will ensure the educational stability of a student placed in resource family care or awaiting placement. Previously, students who

were residing in a temporary location while awaiting their resource family care placement were determined to be homeless. The proposed amendments at N.J.A.C. 6A:17-2.2 will ensure continued enrollment without interruption to the students' education while awaiting their resource family care placement." The commenter suggesting that rephrasing language in proposed Subchapter 4 to explicitly cover children and youth placed and awaiting placement will conform to the intent of the proposed amendment and close this gap. (2)

Response: The Department disagrees that N.J.A.C. 6A:17-4 needs to be amended to add children awaiting foster care placement because this population of students is already included under educational stability as amended by the ESSA. The ESSA removed from the definition of homeless students "children awaiting foster care placement" and included these children under educational stability. Consequently, these protections are extended to children awaiting foster care placement as stipulated in Subchapter 4.



**Adoption Level
March 2, 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:17, Education for Homeless Children and Students in State Facilities

Reason for Action: Readoption with amendments

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

Sunset Date: March 9, 2022

Summary

The Department of Education (Department) proposes to readopt with amendments and new rules N.J.A.C. 6A:17, Education for Homeless Children and Students in State Facilities. The chapter sets forth rules to ensure homeless children and students placed in State facilities receive a thorough and efficient education. The chapter was scheduled to expire on September 10, 2021, pursuant to N.J.S.A. 52:14B-5.1.b. As the Department filed this notice of readoption with the Office of Administrative Law prior to that date, the expiration date of the chapter is extended 180 days to March 9, 2022, pursuant to N.J.S.A. 52:14B-5.1.c(2).

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

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

The proposed amendments at N.J.A.C. 6A:17 are necessary to effectuate the provisions in the ESSA that removed children in any phase of resource family care proceedings from being considered "homeless" under the McKinney-Vento Act. The proposed amendments also will clarify a school district's fiscal obligations when a homeless child is enrolled in a school district

other than the school district of residence and when a homeless student is deemed domiciled or becomes permanently housed. The Department also proposes throughout the chapter, including the chapter's heading, to replace "homeless children" with "homeless children and youths" to update terminology.

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

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

The rules proposed for readoption with amendments and new rules will advance the Department's vision to increase educational equity for all students by aligning State rules with the ESSA, which was enacted to ensure equitable educational programs and services for all students. The proposed amendments and new rules will also implement provisions for the educational stability of children in resource family care by promoting the same level of consistency in educational services afforded to students who reside with their parent(s) for the full school year.

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

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

Subchapter 1. General Provisions

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

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

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

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

This section establishes definitions relevant to the chapter.

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

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

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

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

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

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

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

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

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

Subchapter 2. Education of Homeless Children

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

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

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

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

The Department proposes to amend N.J.A.C. 6A:17-2.2(a), which requires a district board of education to determine that a child is homeless for purposes of this subchapter when the child resides in any of the locations specified at N.J.A.C. 6A:17-2.5(a)1 through 5. The Department proposes to replace “[a] district board of education” with “[t]he district board of education for the school district of residence” to clarify which district board of education is responsible for making the determination of a student’s homeless status. For example, a student is temporarily housed in a shelter with their parent in School District A. The parent had been living in School District B prior to experiencing homelessness. School District B would be the school district of residence and its district board of education would be responsible for making the determination of homeless status.

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

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

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

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

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

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

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

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

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

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

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

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

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

The Department proposes amendments at N.J.A.C. 6A:17-2.7(a), which, in part, requires that, when a school district of residence or the child's parent(s) disputes the determination of homelessness or the determination of the school district of enrollment, the chief school administrator(s) or designee(s) of the involved school district(s) or the child's parent(s) immediately notify the executive county superintendent. The section also requires the executive county superintendent, in consultation with the Department's McKinney-Vento Homeless Education Coordinator, or designee, to immediately decide the child's status. The Department proposed to replace "immediately shall decide the child's status" with "shall decide the child's status within five business days of receipt of the dispute." The proposed amendment will make the timeline for response more reasonable and consistent with current practice. The Department is proposing an adoption level to not adopt the proposed amendment regarding the timeline for the decision.

The Department proposes amendments at N.J.A.C. 6A:17-2.7(b), which requires the chief school administrator(s) or designee(s) of the involved school districts to immediately notify the executive county superintendent when a school district designated as the school district of residence disputes the designation or where no designation can be agreed upon by the involved school districts. The section also requires the executive county superintendent to make a determination immediately, if possible, but no later than within 48 hours. The Department proposed to replace “immediately, if possible, but no later than within 48 hours” with “within five business days of receipt of the dispute and, when necessary, in consultation with the Department’s Homeless Coordinator.” The proposed amendment will make the timeline for response more reasonable and consistent with current practice. The Department is proposing an adoption level to not adopt the proposed amendment regarding the timeline for the decision.

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

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

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

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

The Department proposes to recodify existing N.J.A.C. 6A:17-2.8(c)3i, which requires the State to pay to the school district in which the child is enrolled the weighted base per pupil amount calculated pursuant to N.J.S.A. 18A:7F-49 and the appropriate security and special education categorical aids per pupil when the State assumes fiscal responsibility for the tuition of

a homeless child, as N.J.A.C. 6A:17-2.8(d). The Department also proposes to add “under the circumstances at (c) above” after “[w]hen the State assumes fiscal responsibility for the tuition of a homeless child” to clarify it applies to all three situations at N.J.A.C. 6A:17-2.8(c).

Subchapter 3. Educational Programs for Students in State Facilities

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

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

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

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

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

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

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

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

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

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

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

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

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

This section states that the approval and funding of educational programs shall be in accordance with N.J.S.A. 18A:7B-2 and 18A:7F-43 et seq., or other applicable law. The section

also sets forth the application and approval processes for the funding of State facility education programs.

Subchapter 4. Educational Stability for Children in Resource Family Care

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Social Impact

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

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

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

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

Economic Impact

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

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

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

Federal Standards Statement

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

Jobs Impact

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

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

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

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

Housing Affordability Impact Analysis

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

Smart Growth Development Impact Analysis

The rules proposed for readoption with amendments and new rules will have an insignificant impact on smart growth. There is an extreme unlikelihood the rules proposed for readoption with amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption amendments and new rules concern the provision of related programs and services to homeless children and youths and to students placed in State facilities or in resource family care.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood the rules proposed for readoption with amendments and new rules would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with

amendments and new rules concern the provision of education-related programs and services to homeless children and youths and to students placed in State facilities or in resource family care.

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

and Educational Stability for Children in Resource Family Care

Table of Contents

Subchapter 1. General Provisions

6A:17-1.1 Purpose

6A:17-1.2 Definitions

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

6A:17-2.1 Scope

6A:17-2.2 Determination of homelessness

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

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

6A:17-2.5 School district enrollment

6A:17-2.6 Parental rights

6A:17-2.7 Disputes and appeals

6A:17-2.8 Tuition

Subchapter 3. Educational Programs for Students in State Facilities

6A:17-3.1 Scope

6A:17-3.2 Educational program objectives and requirements

6A:17-3.3 Students with a disability

6A:17-3.4 Staffing and class size

6A:17-3.5 Facilities

6A:17-3.6 Student records and reports

6A:17-3.7 Approval process for funding

Subchapter 4. Educational Stability for Children in Resource Family Care

6A:17-4.1 Purpose and scope

6A:17-4.2 School district responsibilities

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

6A:17-4.4 Immediate enrollment and records transfer

6A:17-4.5 Transportation

6A:17-4.6 Tuition

Educational Stability for Children in Resource Family Care

Subchapter 1. General Provisions

6A:17-1.1 Purpose

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

6A:17-1.2 Definitions

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

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

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

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

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

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

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

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

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

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

“Resource family care” means 24-hour substitute care for children placed away from their parent(s) [[or guardian(s)]] and for whom DCP&P has placement and care responsibility.

The term is synonymous with “foster care” as defined in the Federal Elementary and Secondary Education Act (ESEA), as reauthorized by the Every Student Succeeds Act (ESSA), and includes “resource family home” found elsewhere in the New Jersey Administrative Code and in the New Jersey Statutes Annotated.

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

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

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

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

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

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

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

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

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

6A:17-2.1 Scope

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

6A:17-2.2 Determination of homeless status

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

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

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

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

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

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

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

- (a) The chief school administrator of each school district shall identify a school district liaison for the education of homeless children **and youths**. The school district liaison shall:
1. Facilitate communication and cooperation between the school district of residence and the school district where the homeless child **or youth** resides;
 2. Develop procedures to ensure a homeless child **or youth** residing in the school district is enrolled and attending school pursuant to N.J.A.C. 6A:17-2.5;
 3. Ensure homeless families, children, and youth receive educational services for which they are eligible, including Head Start [and Even Start] programs, preschool programs administered by the [local] **district board of education** [agency], and referrals to health care, dental, mental health, and other appropriate services;
 4. Inform parents [and guardians] of homeless children and youths of the educational and related opportunities available to their children and ensure that [they] **parents** are provided with meaningful opportunities to participate in the education of their children;
 5. Ensure that public notice of the educational rights of homeless children and youths is disseminated where such children receive services, such as schools, family shelters, and soup kitchens;
 6. Ensure enrollment disputes are resolved pursuant to N.J.A.C. 6A:17-2.7;

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

6A:17-2.5 School district enrollment

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

(b) The chief school administrator of the school district of residence, or **the chief school administrator's** designee, shall decide the school district of enrollment of a homeless child **or youth** based on what is determined to be in the best interest of the child **or youth** after considering:

1. The enrollment of the homeless child **or youth** in the school district of residence to the extent feasible, except when doing so is contrary to the wishes of the child's **or youth's** parent [or guardian];
2. The continuity of the child's educational program;
3. The eligibility of the child for special instructional programs, including, but not limited to, bilingual, gifted and talented, special education, early childhood, and career and technical education programs; and
4. The distance, travel time, and safety factors in coordinating transportation services from the residence to the school.

(c) The chief school administrator of the school district of residence, or **the chief school administrator's** designee, shall determine the child's **or youth's** school district of enrollment immediately after consultation with the parent. The school district of residence shall adhere to the following procedures:

1. Enrollment decisions shall be made immediately upon notification of the need for enrollment. When the decision is made, the child **or youth** shall be enrolled immediately. If a dispute arises regarding enrollment of a homeless child **or youth**, the homeless child **or youth** shall be immediately enrolled in the school district in which enrollment is sought by the parent [or guardian], pending resolution of the dispute pursuant to N.J.A.C. 6A:17-2.7.
2. Consultation with the parent regarding the enrollment decision and the right to appeal that decision shall be documented in writing.

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

6A:17-2.6 Parental rights

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

6A:17-2.7 Disputes and appeals

- (a) When a dispute occurs regarding the determination of homelessness or the determination of the school district of enrollment made by the school district of residence, the chief school administrator(s), or **the chief school administrator's** designee(s), of the involved school district(s) or the child's **or youth's** parent(s) shall immediately notify the executive county superintendent[, who, in]. **In** consultation with the Department's McKinney-Vento Homeless Education Coordinator, or [his or her] **the coordinator's** designee, [immediately] **the executive county superintendent** shall **immediately** decide the child's **or youth's** status **[[within five business days of receipt of the dispute]]**. If a dispute remains between the parent and the involved school district(s) following the executive county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner for determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.
- (b) When a school district designated as the school district of residence disputes its designation as the school district of residence, or where no designation can be agreed upon by the involved school districts, the chief school administrator(s), or **the chief school administrator's** designee(s), of the involved school districts shall immediately notify the executive county superintendent[, who]. **The executive county superintendent** shall make a determination [immediately, if possible, but no later than] **immediately, if possible, but no later than** within [48 hours] **[[five business days of receipt of the dispute]] 48 hours** and, when necessary, **in consultation with the Department's Homeless Education Coordinator, or the Coordinator's designee.**

1. If the dispute regarding determination of **the school** district of residence does not involve the determination of homelessness and/or **school** district of enrollment, the school district disputing the executive county superintendent's determination may appeal to the Department pursuant to N.J.A.C. 6A:23A-19.2(d), (e), and (f), and request a determination from the Division of [Administration and] Finance.
 2. If an appeal of a determination of **the school** district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.
- (c) Any dispute or appeal shall not delay the homeless child's **or youth's** immediate enrollment or continued enrollment in the school district. The homeless child **or youth** shall be enrolled in the school district in which enrollment or continued enrollment is sought by the parent [or guardian], pending resolution of the dispute or appeal.
- (d) Disputes and appeals involving the services provided to a homeless child **or youth** with a disability shall be made pursuant to N.J.A.C. 6A:14.

6A:17-2.8 Tuition

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

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

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

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

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

Subchapter 3. Educational Programs for Students in State Facilities

6A:17-3.1 Scope

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

6A:17-3.2 Educational program objectives and requirements

- (a) Each State agency shall develop educational programs to complement the agency's primary mission and provide educational opportunities that meet the identified needs of students in each State facility. The programs shall be delivered, in accordance with N.J.A.C. 6A:8-5.1, through traditional strategies or a variety of individualized learning opportunities, which allow high school credit to be granted through alternative learning experiences, in accordance with program completion authorized [in] **at** N.J.A.C. 6A:8-5.1(a)2.
1. Upon a student's placement in the State facility, the State agency shall:
 - i. Provide a program comparable to the [special education student's] **student with a disability's** current individualized education program (IEP), pursuant to N.J.A.C. 6A:14-4.1(g), and implement the current IEP or develop a new IEP pursuant to N.J.A.C. 6A:14-4.1(g)1 through 3. When a [special education] student **with a disability** is placed by a school district on a tuition basis, the school district of residence shall be responsible for the development of the student's IEP;

- ii. Develop an individualized program plan (IPP), within 30 calendar days, for each general education student, in consultation with the student's parent, school district of residence, and a team of professionals with knowledge of the student's educational, behavioral, emotional, social, and health needs to identify appropriate instructional and support services. The IPP shall minimally include the following information for the student:
 - (1) NJSMART number and personally identifiable information;
 - (2) Current academic standing on the date of development;
 - (3) Results of educational screening administered by the State agency;
 - (4) Specific curriculum areas and course titles designed to meet all of the New Jersey Student Learning Standards;
 - (5) Graduation requirements of the school district of residence, for students in grades nine through 12; and
 - (6) Services to facilitate the transition of a student returning to the general education program.

- iii. Discuss the IPP with the student and make a reasonable effort to obtain parental consent for an initial IPP, including written notice.
 - (1) The State facility shall provide written notice to the parent, with a copy of the IPP, that requests the parent's consent but clearly indicates the IPP will be implemented if consent is not received within 15 days of receipt of the notice.
 - (2) Parental consent need not be obtained for an initial IPP if the parent cannot be found or does not respond after reasonable efforts, or parental rights have been terminated or subrogated for purposes of consenting to eligibility by a court of competent jurisdiction and consent has been given by an individual the court has appointed.

- (3) The State facility shall document it is unable to secure the participation of the parent by maintaining a record of its attempts to arrange for the parental consent of the IPP, including, but not limited to:
 - (A) Detailed records of telephone calls made or attempted and the results of the calls; and
 - (B) Copies of correspondence sent to the parents and any response(s) received; and
 - iv. Review and revise the IPP at any time during the student's enrollment, as needed, or on an annual basis if the student remains enrolled in the State facility educational program, in consultation with the school district of residence.
 - (1) The parent shall be advised in writing of any revision(s) to the IPP.
- (b) Each State agency shall utilize the following program objectives for achieving the legislative goal as stated [in] at N.J.S.A. 18A:7B-1 et seq., of providing a thorough and efficient education and as the framework for developing educational experiences that meet the specialized needs of all students in each State facility under the agency's jurisdiction. The educational programs, as provided for under the State Facilities Education Act shall:
 - 1. Provide instruction in the New Jersey Student Learning Standards and assist students in working toward fulfilling the high school graduation requirements contained in N.J.A.C. 6A:8-5.1;
 - 2. Provide relevant job training and enhance occupational competencies through career and technical education programs, where appropriate, pursuant to N.J.A.C. 6A:19, Career and Technical Education Programs and Standards, and [N.J.A.C.] 6A:8, Standards and Assessments;
 - 3. As appropriate, provide adult education programs and post-secondary and college programs offered by institutions licensed by the Department of Education or the

Office of the Secretary of Higher Education in programs operated by the [State] Departments of Corrections[,] **and** Children and Families, [and Human Services,] pursuant to N.J.S.A. 18A:7B-4, 8, and 9; and

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

exceed 30 consecutive school days, the IEP team shall convene a meeting to review and, if appropriate, revise the student's IEP.

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

6A:17-3.3 Students with a disability

Each State agency shall ensure all students with a disability in the agency's State facilities are provided a free and appropriate public education as set forth under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq., and shall provide special education and related services as stipulated in the individualized education program (IEP) in accordance with the rules governing special education at N.J.A.C. 6A:14.

6A:17-3.4 Staffing and class size

- (a) Each State agency, either independently or through contractual agreements, shall employ the educational personnel required to ensure the provision of programs and services pursuant to this subchapter.
 - 1. To maintain program operations during temporary educational personnel absences and to enable students to fulfill credit and graduation requirements, the State agency shall ensure appropriately certified substitute teachers for academic and career and technical education programs are available.
 - 2. Substitute teachers in State facilities shall adhere to the requirements [pursuant to] **at N.J.A.C. 6A:9B-[6.5]7.**
- (b) The Office of Education in each State agency shall ensure all educational personnel possess the appropriate certification endorsement issued by the State Board of Examiners pursuant to N.J.S.A. 18A:6-38.
- (c) Each State agency shall maintain the certification for all educational staff on file at the respective Office of Education and at the appropriate program site.
- (d) The Office of Education in each State agency shall prepare, and make available, a plan for the required professional development for all teachers and educational services personnel employed by that State agency consistent with the requirements [of] **at N.J.A.C. 6A:9C[-3 and 6A:9B-14], Professional Development.**

- (e) Each State agency shall ensure the provision of classes for general education students that shall not exceed 12 students.
 - 1. A State agency may request exceptions to this requirement as part of the annual approval process required by N.J.A.C. 6A:17-3.7(c).
 - 2. The Department of Education shall grant exceptions on a case-by-case basis when the requested exception does the following:
 - i. Justifies the need for an alternate program structure;
 - ii. Demonstrates the specialized needs of the students served will continue to be met; and
 - iii. Ensures the necessary supervision, security, and safety of the students served.
- (f) The class size of special education programs serving solely students with disabilities shall be in accordance with N.J.A.C. 6A:14-4.7.

6A:17-3.5 Facilities

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

6A:17-3.6 Student records and reports

- (a) Within 10 school days of receipt of a request for a copy of the student's educational records by a State facility, the school district receiving the request shall provide the State facility with the student's educational records and other relevant school district information to assist the transition, including, but not limited to, the following:
 - 1. State identification number in NJSMART;

2. The most recent report card;
 3. Transcripts school district's graduation requirements for students in grades nine through 12;
 4. Attendance standards;
 5. The name of a contact person;
 6. For students with disabilities, the name of a special education contact person;
 7. Statewide assessment results;
 8. Other assessment results, if available;
 9. Health records, including immunizations pursuant to N.J.A.C. 6A:16-2.4(d);
 10. Photocopy of the permanent record card pursuant to N.J.A.C. 6A:32-7.5(e)5; and
 11. The most current eligibility conference report, IEP, and child study team assessments for [special education] students **with disabilities**.
- (b) Each State agency shall maintain student records in accordance with N.J.A.C. 6A:32-7. All educational records shall be kept in files separate from court and other non-educational records required to be safeguarded from public inspection pursuant to N.J.S.A. 2A:4A-60.
- (c) Each State agency shall ensure the school district of residence is notified of their students' progress toward meeting local and State high school graduation requirements, pursuant to N.J.A.C. 6A:8-5.1, at the marking period intervals established in the agency's school calendar.
- (d) To ensure full and appropriate credit for a program of study completed by a student, each State agency shall transfer educational records and a final progress report for each student exiting a State facility to the school district identified upon discharge, or if none is identified, the school district of residence, as appropriate, within 10 school days of the student's exit. The report shall include a designated contact person and the following information, which is necessary to formulate an appropriate educational program and to ensure credit for work completed is granted:

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

6A:17-3.7 Approval process for funding

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

under its jurisdiction. The plan shall include, at a minimum, a program description; staffing patterns; facility-level budget information; signed statement of assurance; program narrative; and contracted services.

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

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

Subchapter 4. Educational Stability for Children in Resource Family Care

6A:17-4.1 Purpose and scope

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

the following circumstances: a child in resource family care placement remains in the child's current school district unless a determination has been made that remaining in the current school district is not in the child's best interest, pursuant to N.J.S.A. 30:4C-26b; immediate enrollment and records transfer take place; and a point of contact is designated.

6A:17-4.2 School district responsibilities

(a) Each district board of education shall:

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

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

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

6A:17-4.4 Immediate enrollment and records transfer

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

school district according to DCP&P's best interest determination may continue for the remainder of the academic year, upon request of the parent(s).

6A:17-4.5 Transportation

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

6A:17-4.6 Tuition

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