

## **Proposed Readoption with Amendments at N.J.A.C. 6A:12, Interdistrict Public School Choice Program**

The following is the accessible version of the proposed readoption with amendments at N.J.A.C. 6A:12. The adoption level document includes three sections – [comments and responses](#), [summary](#) and [rules proposed for readoption and proposed amendments](#).

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

This comment and response form contains comments from the May 1, 2024, State Board of Education meeting when the rulemaking was considered at Proposal Level.

**Topic:** Interdistrict Public School Choice      **Meeting Date:** September 4, 2024

**Code Citation:** N.J.A.C. 6A:12      **Level:** Adoption

**Division:** Field Support and Services

**Completed by:** Interdistrict School Choice and Nonpublic Schools

**Summary of Comments and Agency Responses:**

The following is a summary of the comments received from members of 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. Maggi Downham, Co-executive Director, New Jersey Interdistrict Public School Choice Association
2. Valarie Smith, Co-executive Director, New Jersey Interdistrict Public School Choice Association
3. Jean Public
4. David Bander, Esq., Kaitlyn Dunphy, Esq., and Katrina Homel, Esq., associate directors of Legal Services and Member Rights, and Elisabeth Yucis, Associate Director of Professional Development and Instructional Issues, New Jersey Education Association

1. **Comment:** The commenter supported the proposed amendments at N.J.A.C. 6A:12. **(2)**  
**Response:** The Department appreciates the support.
2. **Comment:** The commenter stated that the Interdistrict Public School Choice (choice program) was created to give students the opportunity to attend schools beyond the boundaries of restricted attendance zones. Citing the chapter's purpose at N.J.A.C. 6A:12-1.1, the commenter also stated that the choice program is fundamental to improving equity in New Jersey's kindergarten through grade 12 education system and can be a primary vehicle for achieving greater diversity if the choice program is allowed to flourish. **(2)**  
**Response:** The commenter's statement that the choice program is fundamental to improving equity in New Jersey's school system is not a stated goal of the choice program, pursuant its authorizing statute at N.J.S.A. 18A:36B-14 et seq. The Department proposed an amendment at N.J.A.C. 6A:12-1.1 to delete the reasons for the choice program and its impact because they are not relevant to the chapter's purpose.
3. **Comment:** The commenter requested that the Department adopt new rules at N.J.A.C. 6A:12-6.1, as proposed for recodification, to require the transportation of choice students to be performed by employees of the school district providing transportation. The commenter stated that the requested change would allow the school district providing

transportation to directly supervise the employees, assign them appropriately, and address accommodations requested by parents. The commenter also stated that the requested change would ensure continuity and stability in the transportation services provided to choice students and would assure that the employees providing transportation have the appropriate credentials and required background checks. **(4)**

**Response:** The Department disagrees that the requested change is necessary. The existing regulations regarding transportation of choice students are in accordance with N.J.S.A. 18A:36B-22 and N.J.A.C. 6A:27-4, which do not require transportation services to be provided by a school district employee. The existing regulations are consistent with transportation services provided to students who attend school outside of the resident school district, including charter schools, county vocational school districts, and approved private schools for students with disabilities.

4. **Comment:** The commenters expressed support for the choice program and its expansion so more students can attend schools outside their resident school districts. The commenters provided three examples of success stories from the choice program: Glassboro High School, which enables students to take college courses and graduate with college credits, Sterling High School, which has been able to maintain its Reserve Officers' Training Corps (ROTC) program despite previous declining enrollment, and the Deal Borough School District, which has a low per pupil cost. **(1 and 2)**

**Response:** The Department recognizes the positive impact that participation in the choice program has had for choice districts and choice students.

5. **Comment:** The commenter expressed frustration that the Department has not engaged in efforts to expand the number of participating choice districts since 2013, when the Department first notified participating choice districts of an enrollment limit. The commenter described outreach efforts to parents and school districts that the Department engaged in during the choice program's expansion in 2012. The commenter stated that the State-imposed enrollment limit prohibiting expansion of the choice program has resulted in choice districts with empty choice seats and school districts and students interested in participating in the choice program, but unable to do so. The commenter also stated that the decision to limit choice enrollment has especially had a negative impact on choice districts that joined the program right before the enrollment limit was instituted, thereby restricting the scale up of their choice programs. The commenter further stated that the limit has resulted in several school districts no longer participating in the choice program, which resulted in fewer participating choice districts. The commenter asked the State Board of Education (State Board) to support the elimination of the limit on choice enrollment and new school district applications. **(1)**

**Response:** The Department is required to manage choice student enrollment based on the funding approved by the New Jersey Legislature in the annual appropriations act. Beginning in Fiscal Year 2014-2015, funding for choice enrollment was limited by the New Jersey Legislature due to exponential choice program enrollment growth. Therefore, the Department must limit the number of available choice seats in a consistent, fair, and transparent manner, by not increasing, with rare exceptions, the number of choice seats in participating choice districts and prohibiting new school districts from joining the choice program. There were 105 participating choice districts in Fiscal Year 2013-2014, which increased to a high of 131 in Fiscal Year 2015-2016, the last year when new school districts were allowed to join the choice program. There are 119 choice districts in Fiscal Year 2023-2024. The reasons provided by former choice districts for leaving the choice program are varied, and include declining choice program enrollment, moving to a parent-paid tuition model, and becoming a non-operating school district, as well as the enrollment

limit placed on choice districts. Due to rising per pupil choice funding, the Department has not added new choice districts to replace those that have left the choice program.

6. **Comment:** The commenter asked the State Board to support the goal of allowing choice districts to enroll students on a parent-paid tuition basis. (1)

**Response:** N.J.S.A. 18A:36B-21.b explicitly prohibits a choice district from being eligible to enroll students on a tuition basis pursuant to N.J.S.A. 18A:38-3 while participating in the choice program.

7. **Comment:** The commenter contended that the Department was unable, at the February State Board meeting, to provide requested information regarding wait lists for the choice program, despite the requirement at N.J.S.A. 18A:36B-24 for the Commissioner to annually report, to the State Board, the Legislature, and the Joint Committee on the Public Schools, on the choice program's effectiveness. (1)

**Response:** The Department provided the following information at the March 6, 2024, State Board meeting based on a choice district survey conducted on the student application cycle for the 2023-2024 school year: The number of choice student applicants was 3,595 and 1,484 (41 percent) were accepted. The number of applicants on waitlists ranged from zero (16 percent of choice districts) to 21 or above (23 percent of choice districts). Forty-nine percent of choice districts indicated they had a waitlist of between one and 10 applicants.

8. **Comment:** The commenter asked why enrollment must be completed by December 31 of the year prior, but funding is determined by the following October 15 enrollment count. The commenter contended that this date is too early for most parents who do not plan that far in advance and requested that the date be changed to mirror that for charter schools, where students can enroll throughout the year. (2)

**Response:** Pursuant to N.J.S.A. 18A:36B-20.a, student applications to choice districts must be submitted to the sending district no later than the date specified by the Commissioner. Pursuant to N.J.A.C. 6A:12-4.3(a), as proposed for readoption with amendments, the student application timeline is set by the Commissioner each year no later than September 1, giving interested parents/guardians and choice districts the ability to plan accordingly. The Department's timeline includes many steps culminating in the submission of the choice district's projected 2024-2025 fiscal year choice enrollment data submission by the end of January. The data are used to develop the Governor's annual budget proposal, thereby ensuring funding for the choice program is available. As a result, the Department must set tight deadlines.

9. **Comment:** The commenter stated that the choice program was presented as a pilot program and that the commenter does not think it has worked. (3)

**Response:** The Interdistrict Public School Choice Program Act was initially established as a five-year pilot program in 1999. The statute was amended in 2010 to expand the choice program and to make it permanent.

10. **Comment:** The commenter opposed the choice program because it is very expensive and has contributed to the increase in school funding. (3)

**Response:** The choice program is required pursuant to N.J.S.A. 18A:36B-14 et seq. Each year, the Legislature passes the annual appropriations act, which determines the funding for the choice program. Therefore, any change to the choice program or the funding level would require an act of the Legislature.

11. **Comment:** The commenters stated that it is less expensive for the State to fund choice students attending Deal Borough School District than for students attending Asbury Park

School District's elementary schools. The commenters provided per pupil expenditures for the Asbury Park School District's elementary schools and the Deal Borough School District, which is a choice district that receives choice students from Asbury Park, to support the commenters' assertion. **(1 and 2)Response:** The comment is outside the scope of the rulemaking.

12. **Comment:** The commenter stated that the statutorily required annual report to the Legislature has not been produced since the choice program's expansion in 2010. The commenter also stated that the Department was unable to provide the commenter with demographic enrollment data and, instead, referred the commenter to the Office of the Attorney General for the data. **(1)**  
**Response:** The comment is outside the scope of the rulemaking.

### Agency-initiated Changes

1. At adoption level, the Department proposes at N.J.A.C. 6A:12-2.2(a)2 to not delete "kindergarten." The Department also proposes at adoption level to add "or" after "preschool" to align the regulation with N.J.S.A. 18A:36B-20.a.
  2. The one-year requirement shall not apply to an [student] **eligible sibling** applying to enroll in [kindergarten] **preschool \*or kindergarten\*** in a choice district [if that student already has a sibling enrolled in and attending the choice district and if the district of residence of that student does not offer a public pre-school program].
2. At adoption level, the Department proposes an amendment at recodified N.J.A.C. 6A:12-3.4(d) to delete the two references to "of resident students who are presently enrolled in and attending the choice district." The proposed amendments will align the regulation with proposed amendments at N.J.A.C. 6A:12-2.2(a)2, 3.1(a)2, and 3.4(e)2. The language proposed for deletion is unnecessary because of the proposed definition of "eligible sibling" at N.J.A.C. 6A:12-1.3.
  - (d) [Where] **If a sending district [board of education of a sending district has adopted a resolution] has received approval from the Commissioner, or the Commissioner's designee**, to impose a limit on the number of [its] students participating in the choice program [pursuant to this subsection,] and [when] the [student] notices of **student** intention to participate in the choice program exceed [that] **the established** limit, before conducting the lottery, the sending district may give preference to **eligible** siblings [[of [its] resident students [already] **who are presently** enrolled in and attending [the] a choice district]]. **If the choice district elects to give enrollment preference to eligible siblings of choice**

**students, the sending district also shall give preference to eligible siblings [[of resident students who are presently enrolled in and attending the choice district]]. This provision shall apply only to choice students and eligible siblings who would be attending the same choice district or two choice districts that are in a send-receive relationship.**



## State of New Jersey

DEPARTMENT OF EDUCATION

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**Adoption Level**  
**September 4, 2024**

PHILIP D. MURPHY  
*Governor*

TAHESHA L. WAY  
*Lt. Governor*

KEVIN DEHMER  
*Acting Commissioner*

**To:** Members, State Board of Education

**From:** Kevin Dehmer  
Acting Commissioner

**Subject:** N.J.A.C. 6A:12, Interdistrict Public School Choice

**Reason for Action:** Readoption with amendments

**Authority:** N.J.S.A. 18A:36B-14 through 24

**Sunset Date:** April 6, 2024

### Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:12, Interdistrict Public School Choice, with amendments and repeals. The chapter establishes the rules for the Interdistrict Public School Choice Program (choice program or program). The chapter was scheduled to expire on April 6, 2024. As the Department submitted the notice of proposal to the Office of Administrative Law prior to that date, the expiration date was extended 180 days to October 3, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The choice program was originally established by the State Board of Education in October 1999 as a five-year pilot. The rules were amended in December 2000 to conform to N.J.S.A. 18A:36B-1 et seq., the Interdistrict Public School Choice Program Act of 1999, which became effective on January 18, 2000, and expired on June 30, 2005. The program continued pursuant to the rules that were amended again in December 2004 and readopted without amendment in 2009. The Interdistrict Public School Choice Program Act was amended in 2010 to expand the program to additional school districts; N.J.A.C. 6A:12 was amended in 2012 to align the chapter with the revised statute. The rules were readopted without amendment effective April 2017.

The proposed amendments are intended to clarify issues and questions raised by choice districts and parents. Additional amendments will implement a Superior Court of New Jersey, Appellate Division decision<sup>1</sup> that required the Department to enumerate the requirements for its

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<sup>1</sup> See [Milford Borough Board of Education, v. Christopher D. Cerf, Commissioner of Education of the State of New Jersey, A-1584-11T2](#).

review and approval of a sending district seeking to restrict student participation in the choice program.

Unless otherwise noted, all other amendments are proposed for clarity and grammatical and stylistic improvements.

The following summary provides an overview of each section and the proposed amendments and repeals.

### **Subchapter 1. General Provisions**

#### **N.J.A.C. 6A:12-1.1 Purpose**

This section establishes the chapter's purpose, which is to establish the rules for the choice program at N.J.S.A. 18A:36B-14 et seq. The section also states that the choice program is necessary to increase options and flexibility for parents and students in selecting a school that best meets the needs of each student, thereby improving educational opportunities for New Jersey citizens. The section further states that the choice program has increased the degree to which the education system is responsive to parents and students, and has affected systemic improvements such as enhancing academic achievement and improving efficiency through a voluntary redistribution of students from overcrowded to under-enrolled school districts. The section also states that the choice program can improve the quality of public school education in New Jersey by creating a healthy competition among school districts.

The Department proposes to delete the reasons for the choice program and its impact because they are not relevant to the chapter's purpose.

#### **N.J.A.C. 6A:12-1.2 Scope**

The section establishes the chapter's scope, which explains school district eligibility to participate in the choice program, prohibits choice districts from maintaining a tuition program and a choice program in the same grade levels open to choice students, and allows school districts in sending/receiving relationships to participate in the choice program unless otherwise legally prohibited.

The Department proposes to amend N.J.A.C. 6A:12-1.2(a) to indicate that a choice district may accept non-resident students into one or more schools or a specialized educational program in the choice district, rather than the existing reference to only "an educational program." The proposed amendment will clarify that choice students can be accepted to attend a school or a specialized educational program in a choice district.

The Department proposes to amend N.J.A.C. 6A:12-1.2(c) to add "parent-paid" before "tuition program" to specify that choice districts are prohibited from maintaining parent-paid tuition programs, pursuant to N.J.S.A. 18A:38-3. Choice districts still can maintain special education programs that serve students with disabilities who are placed in the choice district by the district of residence in fulfillment of the students' individualized education programs (IEPs) and that charge tuition to the district of residence.

The Department proposes to delete N.J.A.C. 6A:12-1.2(d), which states that district boards of education currently in a sending/receiving relationship are eligible to participate in the choice program unless otherwise legally prohibited. The subsection is unnecessary because a school district's sending/receiving relationship is not germane to its participation in the choice program.



## **N.J.A.C. 6A:12-1.3 Definitions**

The section defines terms used throughout the chapter.

The Department proposes to amend the definition for “choice district” to replace “school or schools” with “specialized educational program or school(s).” The proposed amendment reflects that a choice district can enroll choice students from a sending district in a specialized educational program or a school, which is consistent with N.J.A.C. 6A:12-1.2(a), as proposed for amendment, and the proposed definition of “specialized education program” at N.J.A.C. 6A:12-1.3.

The Department proposes to amend the definition for “choice student” to add that students who are received by the choice district through a send-receive relationship shall not be considered choice students. The proposed amendment will clarify that students whose school of attendance is governed by a send-receive relationship are not eligible for the choice program in the receiving school district. A student would be eligible to apply for the choice program in other choice districts that are not party to the specific send-receive relationship.

The Department proposes a definition for “eligible sibling” to mean a student who has a sibling who is a choice student presently enrolled in and attending a choice district for the current year and who will continue to attend in the following school year. An eligible sibling may be given enrollment preference in the student application process. The proposed definition will clarify that siblings given enrollment preference must be enrolled simultaneously during the applicant’s first year as a choice student. The Department proposes amendments at N.J.A.C. 6A:12-2.2(a)2, 3.1(a)2, and 3.4(e) to utilize “eligible sibling” rather than similar existing language.

The Department proposes to amend the definition for “sending district” to clarify that the sending district can be for choice students or prospective choice students. The Department also proposes to delete “charter school, or any school the student is required by law to attend” because neither a charter school nor any school the student is required by law to attend, which includes schools and school districts with special education programs that serve students who are placed by the district of residence in fulfillment of the students’ IEPs (that is, out-of-district placements), is considered a sending districts pursuant to Title 6A of the New Jersey Administrative Code. A student who attends a charter school, or another school or school district as the result of an out-of-district placement, remains a resident student of the sending district. The proposed amendment also will align the definition with N.J.S.A. 18A:36B-15.

The Department proposes a definition for “specialized educational program” to mean a choice district program that uses student selection criteria for admission, in accordance with N.J.S.A. 18A:36B-20.b.

The Department proposes a definition for “unfunded choice student” to means a student who has been accepted by a choice district as a choice student outside of the timeline established pursuant to N.J.A.C. 6A:12-3.2, and for whom the choice district is unable to receive choice funding in the current and/or subsequent school year due to the Department’s choice enrollment collection cycle.

### **Subchapter 2. Choice Program Eligibility Criteria**

The subchapter establishes the eligibility criteria for a school district and a student to participate in the choice program.

The Department proposes to amend the subchapter heading to “Choice District and Choice Student Eligibility Criteria” to better reflect the subchapter’s content, as proposed for amendment.

### **N.J.A.C. 6A:12-2.1 Eligibility criteria for district boards of education**

The section prescribes the eligibility criteria for school districts that seek to participate in the choice program.

The Department proposes an amendment at N.J.A.C. 6A:12-2.1 to delete “of a school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes is eligible to” because N.J.A.C. 6A:12-1.2(a) and the definition of “choice district” at N.J.A.C. 6A:12-1.3 already include the statutory references.

The Department also proposes an amendment at N.J.A.C. 6A:12-2.1 to state that an “eligible” district board of education must complete and submit a choice program application pursuant to N.J.S.A. 18A:36B-17 and the chapter to participate in the choice program. The proposed amendment will combine the requirement at existing N.J.A.C. 6A:12-3.1 for an eligible applicant for a choice district to complete an application and submit it pursuant to N.J.S.A. 18A:36B-17 and N.J.A.C. 6A:12-2.1 because both existing sections pertain to school district eligibility criteria. Existing N.J.A.C. 6A:12-3.1 is proposed for repeal because it no longer will be necessary.

The Department further proposes an amendment at N.J.A.C. 6A:12-2.1 to add “or the Commissioner’s designee” after the reference to approval from the Commissioner. The same amendment is proposed throughout the chapter, where applicable.

### **N.J.A.C. 6A:12-2.2 Eligibility criteria for students**

This section provides the eligibility criteria for students interested in applying to attend a choice district.

The Department proposes an amendment at N.J.A.C. 6A:12-2.2(a) to clarify that the reference to “one full year” for the required attendance in a school in the sending district is an academic year.

The Department proposes an amendment at N.J.A.C. 6A:12-2.2(a)2 to add “preschool or” before “kindergarten.” The Department proposes an additional amendment at N.J.A.C. 6A:12-2.2(a)2 to clarify that the exception to the one-year enrollment requirement applies to all eligible siblings, without conditions, by deleting the requirement that “the district of residence of that student does not offer a public pre-school program.” The proposed amendment is necessary because the statute does not include the requirement.

The Department proposes new N.J.A.C. 6A:12-2.2(a)3 to state that the one-year requirement for purposes of determining eligibility does not apply to a choice student currently enrolled in a choice district who reaches the terminal grade in the choice district and the student is applying to enroll in another choice district for secondary school. The proposed paragraph is necessary because affected choice students do not meet the current eligibility requirement, pursuant to existing N.J.A.C. 6A:12-2.2(a). Therefore, affected choice students would have to follow the application procedures for students not meeting eligibility requirements, pursuant to N.J.A.C. 6A:12-4.4, which does not allow students to be considered for admission until the choice district has conducted the application cycle and has exhausted its waiting list of students who meet the requirements at N.J.A.C. 6A:12-2.2(a). This proposed regulation will allow a choice student to matriculate with their peers to a secondary school that is also a participating choice district, rather than being required to return to a school in their sending district.

The Department proposes to amend N.J.A.C. 6A:12-2.2(b) to add a cross-reference to N.J.A.C. 6A:12-3.3 because it applies to students who do not meet the eligibility requirements. The Department also proposes to delete the second sentence at N.J.A.C. 6A:12-2.2(b), which prohibits a choice district that allows nonpublic school student enrollment from making distinctions between nonpublic students on the basis of where they receive this academic instruction. The sentence is unnecessary because this type of discrimination is addressed at N.J.S.A. 18A:36B-20.b, which prohibits a school district from discriminating in its admission policies or practices.

### **Subchapter 3. Choice District Application Procedures**

This subchapter establishes the application process for a district board of education interested in applying to become a choice district.

#### **N.J.A.C. 6A:12-3.1 Choice program application procedures for a district board of education**

The section requires a school district to complete a choice program application and submit it pursuant to N.J.S.A. 18A:36B-17.

The Department proposes to repeal N.J.A.C. 6A:12-3.1, as previously explained in the Summary discussion at N.J.A.C. 6A:12-2.1.

### **Subchapter 4. Choice Student Admissions**

This subchapter provides the rules governing the admissions of choice students.

The Department proposes to recodify this subchapter as Subchapter 3.

#### **N.J.A.C. 6A:12-4.1 Sending district procedures**

The section provides the procedures for a sending district to impose restrictions on student participation in the choice program.

The Department proposes to recodify existing N.J.A.C. 6A:12-4.1 as 3.4 with amendments discussed further below.

#### **N.J.A.C. 6A:12-4.2 Choice district procedures for students meeting the eligibility requirements**

The section requires choice districts to admit choice students on a space-available basis. The section also prohibits choice districts from imposing upon prospective choice students admission criteria, other than the statutory criteria. The section further allows choice districts to give enrollment preference to eligible siblings of enrolled students and requires a choice district to hold a public lottery if it receives more applications than available spaces.

The Department proposes to recodify existing N.J.A.C. 6A:12-4.2 as 3.1.

The Department proposes to delete existing N.J.A.C. 6A:12-4.2(a)1, which prohibits a district board of education from preventing students from participating in the choice program, because the paragraph pertains to the sending district and is addressed at recodified N.J.A.C. 6A:12-3.4.

The Department proposes to delete existing N.J.A.C. 6A:12-4.2(a)3, which allows a choice district to give preference for enrollment to siblings of enrolled students, because the allowance is already codified at recodified N.J.A.C. 6A:12-3.1(a)2iii.

The Department proposes to recodify existing N.J.A.C. 6A:12-4.2(a)4i as 3.1(a)2vi and to recodify existing N.J.A.C. 6A:12-4.2(a)4ii, iii, and iv as 3.1(a)2i, ii, and iii, respectively, so the lottery processes appears in a logical sequence.

The Department proposes new N.J.A.C. 6A:12-3.1(a)2iv to permit a choice district to give enrollment preference to resident students who moved out of the choice district and want to remain enrolled in the choice district as choice students. Without this provision, a resident student who moves out of a choice district after the application deadline for the upcoming year would not be included in the lottery for selection of applicants and would be at the bottom of the application waitlist; therefore, the student would not have a reasonable chance of acceptance into a choice program. The proposed regulation supports the continuity of a student's education.

The Department proposes new N.J.A.C. 6A:12-3.1(a)2iv(1) to designate how the lottery operates for choice districts that have enrollment preference policies for resident students who moved out of the choice district and want to remain enrolled in a choice district that provides preference to eligible siblings. The proposed regulation will require a lottery to be conducted first for the siblings, pursuant to recodified N.J.A.C. 6A:12-3.1(a)2iii, and second for the resident students pursuant to recodified N.J.A.C. 6A:12-3.1(a)2iv. The proposed regulation will establish the order of choice applicants with enrollment preferences for participation and placement on the waiting list as part of the lottery process.

The Department proposes new N.J.A.C. 6A:12-3.1(a)2v to allow a choice district in a receiving relationship with a sending choice district to give enrollment preference to a choice student enrolled in the terminal grade in the sending choice district. Without proposed regulation, a choice student in this situation would not be guaranteed a seat in the choice district for secondary school and would be placed in the lottery along with other choice applicants. The proposed regulation supports the continuity of a student's education.

The Department proposes new N.J.A.C. 6A:12-3.1(a)2v(1) to designate how the lottery operates for receiving choice districts that give enrollment preference to a choice student, pursuant to N.J.A.C. 6A:12-3.1(a)2v, and also provide preference to eligible siblings, but no spaces are available. The proposed regulation will require the lottery to be conducted first for the siblings pursuant to N.J.A.C. 6A:12-3.1(a)2iii, and second for the applicants pursuant to N.J.A.C. 6A:12-3.1(a)2iv.

### **N.J.A.C. 6A:12-4.3 Choice student application procedures**

The section requires the Commissioner to establish a student application timeline each year by September 1. The section also requires the choice district to provide to the Department electronic notification of the number of students who enroll within five business days of the due date in the Commissioner-established timeline. The section further requires the choice district to provide to each sending district board of education written notification of each enrollment notice from a student who is a resident of the sending district, within 10 days of the due date in the Commissioner-established timeline. Lastly, the section allows a student to seek a waiver of the deadlines from the Commissioner by a showing of good cause.

The Department proposes to recodify N.J.A.C. 6A:12-4.3 as 3.2.

The Department proposes an amendment at recodified N.J.A.C. 6A:12-3.2(a) to include in the application timeline the dates for the lottery, pursuant to N.J.A.C. 6A:12-3.2(a)2 and (b), (c), and (d).

The Department proposes new N.J.A.C. 6A:12-3.2(b) to require the choice district to send a notice of acceptance, rejection, or placement on the waitlist to the parent or guardian of

every student who submitted a choice application by the deadline. The Department also proposes to require applicants who are accepted to send notice of their intent to enroll to the choice district. The proposed new subsection will codify the application processes.

The Department proposes an amendment at recodified N.J.A.C. 6A:12-3.2(c) to delete “[w]ithin five business days.” The language proposed for deletion is unnecessary because notification of the number of students who enroll is governed by a timeline established by the Department according to its reporting needs. The Department also proposes to clarify that the choice district must provide, to the Department, notification of the number of choice students who “send notice of their intent to enroll” to correspond to the process set forth at proposed new N.J.A.C. 6A:12-3.2(b).

The Department proposes an amendment at recodified N.J.A.C. 6A:12-3.2(d) to delete “within 10 days” because notification to each sending district of choice enrollment is governed by a timeline established by the Department according to its reporting needs.

The Department proposes new N.J.A.C. 6A:12-3.2(e)1 to allow a choice district that accepts a student with a waiver of the student application deadlines, pursuant to recodified N.J.A.C. 6A:12-3.2(d), to enroll the student as a temporarily unfunded choice student and automatically convert the student’s enrollment to a funded choice student in the next administratively determined choice enrollment data submission if the student remains enrolled. The proposed regulation is necessary to provide an exception for the choice waiver because P.L. 2023, c. 61, amended N.J.S.A. 18A:38-3 to prohibit nonresident students from attending a school district without payment of tuition. The Interdistrict Public School Choice Act at N.J.S.A. 18A:36B-21 states that a choice district shall not be eligible to enroll students on a tuition basis pursuant to N.J.S.A. 18A:38-3 while participating in the choice program. Students accepted with a waiver, who often experience untenable situations in their sending district (that is, harassment, intimidation, or bullying), would not be able to attend the choice district unless they are accepted as temporarily unfunded choice students. Due to data collection timelines and the annual budget process, there is a delay between when students allowed to enter the choice program through a waiver can enroll in the choice district and when the choice district receives State funding for the student. The proposed regulation will ensure that waiver students can access the choice program.

#### **N.J.A.C. 6A:12-4.4 Choice district procedures for students not meeting eligibility requirements**

The section allows a choice district to fill its seats for the choice program with students who do not meet the eligibility requirements if the choice district already has exhausted the list of applicants who meet the eligibility requirements and the waiting list. The section also allows choice districts to accept applications from public school students who do not meet the eligibility requirements and/or nonpublic school students until the Commissioner-set deadline. The section further requires a choice district to send a letter with required information to the student’s parent when the choice district receives an application from a public school student who does not meet the eligibility requirements or from a nonpublic school student.

The Department proposes to recodify N.J.A.C. 6A:12-4.4 as 3.3.

#### **N.J.A.C. 6A:12-4.1 Sending district procedures**

The section provides the procedures for a sending district to limit the number of students participating in the choice program through the adoption of a resolution and for calculation of a sending district’s enrollment for lotteries to determine the number of choice program applicants. The section also prohibits a sending district from restricting the participation of students in the

choice program if the students provide written notice of intent to apply to a specialized educational program that is offered by the choice district and not by the sending district.

The Department proposes to recodify N.J.A.C. 6A:12-4.1 as 3.4. The Department proposes to change the section heading to “sending district restrictions on student participation in a choice program” to reflect the section’s content, as proposed for amendment.

The Department proposes to delete existing N.J.A.C. 6A:12-4.1(a), which prohibits a district board of education from preventing students from participating in a specialized educational program that is offered by the choice district and not offered in the sending district, because the provision has not been utilized. The proposed amendment also will align the regulation with N.J.S.A. 18A:36B-1 et seq.

The Department proposes new N.J.A.C. 6A:12-3.4(a) to allow the district board of education of a sending district to seek a limitation on the number of students participating in the choice program to a maximum of 10 percent of the number of students per grade level per year and 15 percent of the total number of students enrolled in the sending district, based on the Application for State School Aid of the year prior to the first student participating in the choice program, upon approval of the Commissioner, or the Commissioner’s designee. The proposed regulation also will require the sending district board of education seeking to limit student participation in the choice program to submit specific documentation set forth at N.J.A.C. 6A:12-3.4(a)1 and 2 to the Commissioner, or the Commissioner’s designee, for approval. The proposed regulation will ensure consistency with N.J.S.A. 18A:36B-21 and codify Department guidance issued in 2013. The proposed regulation also is required pursuant to a decision made by the Superior Court of New Jersey, Appellate Division<sup>2</sup>, that the Department must enumerate the requirements for Department review and approval of a sending district restricting student participation in a choice program.

The Department proposes new N.J.A.C. 6A:12-3.4(a)1 and 2 to require the following documents for the sending district’s request for limiting student participation in the choice program:

- A resolution adopted by the district board of education specifying the limit on the number of students enrolled in the school district who may participate in the choice program; and
- Supportive documentation, including, but not limited to, evidence of the choice program’s impact on: the sending district’s student enrollment, student achievement, operations, and fiscal conditions; the diversity of the sending district’s population; and the number or quality of programs, course offerings, or classes the sending district offers or the services it provides.

The Department proposes new N.J.A.C. 6A:12-3.4(b) to establish the conditions that must exist for approval of a sending district’s limit on choice participation, pursuant to N.J.S.A. 18A:36B-21. The proposed regulation states that the Commissioner, or the Commissioner’s designee, shall evaluate the documentation submitted pursuant to new N.J.A.C. 6A:12-3.4(a) and determine if t the sending district has demonstrated that the limiting resolution:

- Is in the best interest of the sending district’s students;
- Will not adversely affect the school district’s programs, services, operations, or fiscal conditions; and

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<sup>2</sup> See [Milford Borough Board Of Education, v. Christopher D. Cerf, Commissioner of Education of The State of New Jersey, A-1584-11t2](#).

- Will not adversely affect or limit the diversity of the remainder of the sending district's student population who do not participate in the choice program.

The Department proposes to recodify N.J.A.C. 6A:12-4.1(b) as 3.4(c)1 with amendments to clarify the correct order of actions to be taken once the sending district has received approval from the Commissioner, or the Commissioner's designee, of the resolution to restrict the participation of its students in a choice program.

The Department proposes to delete existing N.J.A.C. 6A:12-4.1(b)1 because it is unnecessary. Students attending a choice program are no longer enrolled in the sending district and are not counted. The Department proposes to delete existing N.J.A.C. 6A:12-4.1(b)2 because it is unnecessary and more appropriately placed in guidance. The Department proposes to delete existing N.J.A.C. 6A:12-4.1(b)3 because there is no express authority in the Interdistrict Public School Choice Program Act for the regulation.

The Department proposes to recodify N.J.A.C. 6A:12-4.1(c)1, 2, 3, and 4 as 3.4(c)2i, ii, iii, and iv, respectively.

The Department proposes an amendment at recodified N.J.A.C. 6A:12-3.4(c) to clarify a sending district's imposition of a participation limit needs to be approved by the Commissioner, or the Commissioner's designee, rather than only being adopted by the district board of education. The same amendment is proposed at recodified N.J.A.C. 6A:12-3.4(d). The Department also proposes an amendment to require the limit to be used every year to restrict participation in a choice program, unless there is a student enrollment increase beyond the enrollment count used to calculate the limiting resolution at N.J.A.C. 6A:12-3.4(a)1.

The Department proposes new N.J.A.C. 6A:12-3.4(c)1 to explain how the calculation of the sending district's restriction on participation in the choice program will be determined if there is an increase of its student enrollment beyond the initial enrollment count used to calculate the limiting resolution at N.J.A.C. 6A:12-3.4(a)1.

The Department proposes new N.J.A.C. 6A:12-3.4(c)2 to clarify that the actions of the sending district, as set forth at recodified N.J.A.C. 6A:12-3.4(c)2i, ii, iii, and iv, are required after the determination of the restrictions on student participation in a choice district, pursuant to proposed N.J.A.C. 6A:12-3.4(c)1, 2, and 3, if the notices of student intention to participate in the choice program exceed the established limit.

The Department proposes an amendment at recodified N.J.A.C. 6A:12-3.4(d) to require sending districts to give enrollment preference to siblings of resident students if the choice district also gives enrollment preference to eligible siblings because it is the Department's policy to allow families to enroll siblings in the same school district. The Department also proposes to add that the provision is applicable only to students and siblings who will be attending the same choice district or the same choice districts that are in a send-receive relationship. The proposed amendment will restrict the enrollment preference from applying to a sibling who will attend a different choice district from their sibling.

## **Subchapter 5. Choice Student Post-Enrollment Policies**

This subchapter provides the rules regarding choice students once they have enrolled in a choice district.

## **N.J.A.C. 6A:12-5.1 Choice student enrollment**

The section allows choice students to remain enrolled in a choice district without submitting annual or periodic applications. The section also obligates a choice district to retain an accepted choice student until graduation or the choice student voluntarily withdraws, even if the choice program is terminated in the choice district or Statewide. The section further allows a student who resides in a choice district and moves during the school year to remain in the choice district until the end of the school year and also allows the student to apply to the choice program as a funded student for the next school year.

The Department proposes to change the section heading from “Choice student enrollment” to “Choice student post-enrollment” to reflect the section’s content.

The Department proposes an amendment at recodified N.J.A.C. 6A:12-4.1(b) to clarify choice students must be retained by the choice district until its terminal grade rather than through graduation, which is commonly misunderstood as being only the end of 12th grade. The same amendment is proposed at N.J.A.C. 6A:12-4.1(c).

The Department proposes an amendment at recodified N.J.A.C. 6A:12-4.1(d) to add “until the terminal grade offered by the choice district” at the end of the rule to clarify choice students must be retained by the choice district until its terminal grade.

The Department proposes an amendment at recodified N.J.A.C. 6A:12-4.1(e) to clarify the resident student must be attending a specialized educational program and/or grade that has been approved for the choice program to be eligible to remain in the choice district after moving out of the choice district. The Department also proposes an amendment to clarify that a resident student who moves during the school year and is allowed to remain in the choice district until the end of the school year would be an unfunded choice student. Choice students who are accepted after the application deadline, including former resident students who move out of the choice district during the school year, will not be included in the Department’s annual choice enrollment report and, therefore, must be designated as unfunded choice students for the school year.

### **Subchapter 6. Appeals**

This subchapter establishes the rules governing appeals to the Commissioner.

The Department proposes to repeal N.J.A.C. 6A:12-6 because the rules for appeals exist at N.J.A.C. 6A:3 and do not need to be repeated at N.J.A.C. 6A:12.

### **Subchapter 7. Administrative Responsibilities of Choice Districts**

This subchapter establishes the administrative responsibilities of choice districts.

## **N.J.A.C. 6A:12-7.1 General provisions**

The section requires choice districts to accept all credits toward graduation awarded by another district board of education for each accepted choice student and to award a diploma to a choice student if the student meets the graduation requirements of the choice district and the State. The section also requires choice districts to establish and maintain a parent information center. The section further requires choice districts to file, with the Department at the end of each application cycle, reports that include demographic and student participation information, fiscal and programmatic information, and updates on the number of available openings.



The Department proposes an amendment at recodified N.J.A.C. 6A:12-5.1(b) to add “in accordance with N.J.S.A. 18A:36B-23” after the requirement for a choice district to establish and maintain a parental information center. The Department proposes to delete existing N.J.A.C. 6A:12-7.1(b)1 and 2 because they merely repeat the provisions at N.J.S.A. 18A:36B-23.

### **Subchapter 8. Transportation**

This subchapter governs transportation of students enrolled in the school choice program.

#### **N.J.A.C. 6A:12-8.1 Student Transportation**

The section makes the sending district responsible for transportation of enrolled choice students who are eligible for transportation services both to and from the choice school in which the student is accepted. The section also requires sending districts to provide transportation or aid in lieu of transportation in accordance with N.J.S.A. 18A:36A-13 and N.J.A.C. 6A:27-4.

The Department proposes an amendment at recodified N.J.A.C. 6A:12-6.1 to clarify that choice districts must provide transportation or aid in lieu of transportation to choice students who are eligible for transportation services. The Department also proposes to replace the statutory reference, which pertains to charter schools, with the correct reference that pertains to transportation.

### **Subchapter 9. Funding**

This subchapter makes provision for funding of students participating in the choice program.

#### **N.J.A.C. 6A:12-9.1 General provisions**

The section stipulates that choice students qualify for State aid pursuant to N.J.S.A. 18A:36B-14 et seq., and that the sending district will receive transportation aid pursuant to existing N.J.A.C. 6A:12-8.1. The section also requires the sending district to maintain fiscal responsibility for any choice student enrolled in, or determined to require, a private day or residential school, except the choice district will be required to contribute State aid received for the student and the sending district will be responsible for the balance.

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

### **Social Impact**

The Interdistrict Public School Choice Program has proven to be beneficial for choice districts, choice students, and their parents. In the 2022–2023 school year, 122 operating choice districts served 5,174 choice students. Choice students benefit from attending a school district with an academic program that better meets their individual needs. In addition, students who reside in choice districts, their parents, and their communities have benefited from many of the following: innovative programs; expansion of opportunities in science, technology, engineering, and mathematics (STEM), the arts, and career-oriented programs; and enrichment of the school community through the addition of students from different backgrounds and with experiences different from those of the choice districts’ resident students.

### **Economic Impact**

The rules proposed for readoption with amendments and repeals provide economic benefits to the choice districts accepting out-of-district students. For each enrolled choice

student, the choice district receives choice aid equal to the per-pupil amount paid by local property tax dollars, plus the amount of State aid attributable to the choice student. The resident district does not incur costs for resident students who attend choice districts, but does not receive State aid for choice students attending other school districts. The Department does not anticipate that the proposed amendments and repeals will affect the choice program's economic impact.

### **Federal Standards Statement**

The rules proposed for readoption with amendments and repeals do not exceed Federal standards, as there are no Federal laws or regulations that impact the choice program.

### **Jobs Impact**

The Department does not expect the rules proposed for readoption with amendments and repeals will have an impact on the generation or loss of jobs in New Jersey.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments and repeals will have no impact on the agriculture industry in New Jersey.

### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the rules proposed for readoption with amendments and repeals do not impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined by the Regulatory Flexibility Act at N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments and repeals affect school districts that voluntarily participate in the Interdistrict School Choice Program and sending districts.

### **Housing Affordability Impact Analysis**

There is an extreme unlikelihood that the rules proposed for readoption with amendments and repeals will have any impact on affordability of housing in New Jersey. There is an extreme unlikelihood that the rules proposed for readoption with amendments and repeals would evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments and repeals affect school districts that voluntarily participate in the Interdistrict School Choice Program and sending districts.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments and repeals will have an insignificant impact on smart growth. There is an extreme unlikelihood that the rules proposed for readoption with amendments and repeals would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments and repeals affect school districts that voluntarily participate in the Interdistrict School Choice Program and sending districts.

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

There is an extreme unlikelihood the rules proposed for readoption with amendments and repeals 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 repeals concern school districts that voluntarily participate in the Interdistrict School Choice Program and sending districts.

**Full text** of the rules proposed for readoption with amendments and repeals follows (additions indicated in bold **thus** or **thus**; deletions indicated in brackets [thus] or [[thus]]):

Table of Contents

Subchapter 1. General Provisions

6A:12-1.1 Purpose

6A:12-1.2 Scope

6A:12-1.3 Definitions

Subchapter 2. Choice [Program] **District and Choice Student** Eligibility Criteria

6A:12-2.1 Eligibility criteria for district boards of education

6A:12-2.2 Eligibility criteria for students

[Subchapter 3. Choice District Application Procedures]

[6A:12-3.1 Choice program application procedures for a district board of education]

Subchapter [4.] **3. Choice Student Admissions**

[6A:12-4.1 Sending district procedures]

6A:12-[4.2]**3.1** Choice district procedures for students meeting the eligibility requirements

6A:12-[4.3]**3.2** Choice student application procedures

6A:12-[4.4]**3.3** Choice district procedures for students not meeting eligibility requirements

**6A:12-3.4 Sending district restrictions on student participation in a choice program**

Subchapter [5.] **4. Choice Student [Post Enrollment] Post-Enrollment Policies**

6A:12-[5.1]**4.1** Choice student **post**-enrollment

[Subchapter 6. Appeals]

[6A:12-6.1 Appeals from Commissioner determinations]

[6A:12-6.2 Appeals from denial of enrollment]

Subchapter [7.] **5. Administrative Responsibilities of Choice Districts**

6A:12-[7.1]**5.1** General provisions

Subchapter [8] **6. Transportation**

6A:12-[8.1]**6.1** Student transportation

Subchapter [9.] **7. Funding**

6A:12-[9.1]**7.1** General provisions

## Chapter 12. Interdistrict Public School Choice

### Subchapter 1. General Provisions

#### 6A:12-1.1 Purpose

The purpose of this chapter is to establish the rules for the Interdistrict Public School Choice Program (choice program) [in the Department of Education (Department)] as provided for [in] **at** N.J.S.A. 18A:36B-14 et seq. [The choice program is necessary to increase options and flexibility for parents and students in selecting a school that best meets the needs of each student, thereby improving educational opportunities for New Jersey citizens. The choice program has increased the degree to which the education system is responsive to parents and students. It has also effected systemic improvements such as enhancing academic achievement and improving efficiency through a voluntary redistribution of students from overcrowded to under-enrolled school districts. Ultimately, the choice program can improve the quality of public school education in New Jersey by creating a healthy competition among school districts.]

#### 6A:12-1.2 Scope

- (a) Any school district in the State established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes [will be] **is** eligible to apply to become a choice district. A choice district may accept non-resident students into [an] **one or more schools or specialized** educational programs in the choice district at the expense of the State.
- (b) District boards of education may [choose to] apply to participate in the choice program as choice districts [by receiving] **and receive** choice students pursuant to this chapter.
- (c) District boards of education [may] **shall** not maintain, at the same time, both a **parent-paid** tuition program, pursuant to N.J.S.A. 18A:38-3, and a choice program in the grade levels [that] the school district has made available to choice students.
- [(d) District boards of education currently in a sending/receiving relationship are eligible to participate in the choice program unless otherwise legally prohibited.]

### 6A:12-1.3 Definitions

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

"Choice district" means a public school district established pursuant to [chapter] **Chapter 8** or [chapter] **Chapter 13** of Title 18A of the New Jersey Statutes that is authorized [under] **pursuant to** the Interdistrict Public School Choice Program to open a [school] **specialized education program** or school(s) to students from a sending district.

"Choice program" means the Interdistrict Public School Choice Program authorized [in] **at** N.J.S.A. 18A:36B-14 et seq.

"Choice student" means an out-of-district student who is accepted into a choice district. **Students who are received by the choice district through a send-receive relationship pursuant to N.J.S.A. 18A:38-8 et seq., shall not be considered choice students.**

**"Eligible sibling" means a student who has a sibling who is a choice student presently enrolled in and attending a choice district for the current school year and who will continue to attend in the following school year. An eligible sibling may be given enrollment preference in the student application process.**

**"[Non-public] Nonpublic school student" means any student who is obtaining academic instruction outside of a public school at the time of [his or her] the student's application to the choice district.**

**"Sending district" means the [choice student's] district of residence[, charter school, or any school the student is required by law to attend] of a choice student or a prospective choice student.**

**"Specialized educational program" means a choice district program that uses student selection criteria for admission, in accordance with N.J.S.A. 18A:36B-20.b.**

**“Unfunded choice student” means a student who has been accepted by a choice district as a choice student outside of the timeline established pursuant to N.J.A.C. 6A:12-3.2, and for whom the choice district is unable to receive choice funding in the current and/or subsequent school year due to the Department’s choice enrollment collection cycle.**

Subchapter 2. Choice [Program] **District and Choice Student** Eligibility Criteria

6A:12-2.1 Eligibility criteria for district boards of education

[A] **An eligible** district board of education [of a school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes is eligible to] **may** participate in the choice program if [it] **the school district** has classroom space available, completes **and submits** an application form provided by the Department pursuant to **N.J.S.A. 18A:36B-17 and** this chapter, and receives approval from the Commissioner, **or the Commissioner’s designee**, to participate.

6A:12-2.2 Eligibility criteria for students

(a) To be eligible to participate in the choice program, a student shall be enrolled at the time of application in [grades] preschool through **grade** 12 in a [public] school of the sending district and **shall** have attended school in the sending district for at least one full **academic** year immediately preceding enrollment in a choice district, including time spent at any school that a student in a particular district of residence is required by law to attend.

1. If a student [attends public school] **is enrolled** in [his or her] **the** district of residence, [and] is counted in that **school** district's October Application for State School Aid, and [the student's family] moves during the school year and [the student attends public school] **enrolls** in [his or her] **a** new district of residence for the remainder of the school year, the student shall have satisfied the one-year eligibility requirement for [application to] the school choice program.
2. The one-year requirement shall not apply to [a student] **an eligible sibling** applying to enroll in [kindergarten] **preschool \*or kindergarten\*** in a choice district [if that student already has a

sibling enrolled in and attending the choice district and if the district of residence of that student does not offer a public pre-school program].

**3. The one-year requirement shall not apply to a choice student currently enrolled in a choice district who reaches the terminal grade in the choice district and the student is applying to enroll in another choice district for secondary school.**

- (b) A public school student who does not meet the eligibility requirements [found in] **at** (a) above or a [non-public] **nonpublic** school student may, nonetheless, apply [to enroll] pursuant to N.J.S.A. 18A:36B-20.a **and N.J.A.C. 6A:12-3.3**. [If a choice district allows for non-public school student enrollment, it may not make distinctions between such students on the basis of where they receive this academic instruction.]
- (c) Students residing out of State may not participate in the choice program.

[Subchapter 3. Choice District Application Procedures]

[6A:12-3.1 Choice program application procedures for a district board of education]

[An eligible applicant for a choice district shall complete an Interdistrict Public School Choice Program application, which shall be made available by the Department and which shall be submitted pursuant to N.J.S.A. 18A:36B-17.]

Subchapter [4.] **3. Choice Student Admissions**

6A:12-4.1 Sending district procedures -- proposed for recodification with amendments as N.J.A.C. 6A:12-3.4

6A:12-[4.2]**3.1** Choice district procedures for students meeting the eligibility requirements

- (a) Choice districts shall admit choice students on a [space available] **space-available** basis.
  - [1. A district board of education shall not prevent students from participating in the school choice program.]



- [2.] **1.** A choice district may not impose admission criteria upon prospective choice [program] students other than [those permitted by statute] **the admission criteria for a specialized educational program, pursuant to N.J.S.A. 18A:36B-20.b.**
- [3. A choice district may give preference for enrollment to siblings of enrolled students.]
- [4.] **2.** [When] **If** a choice district receives more applications than [there are] spaces available, the choice district shall hold a public lottery to determine the selection of students for [participation] **enrollment** in the choice program.
- [i. The choice district shall develop a waiting list based on the lottery.]
- [ii.] **i.** The choice district shall notify the parent or guardian of every student who has submitted an application to participate in the choice program of the **lottery's** date and time [of the lottery].
- [iii.] **ii.** The choice district shall assign a number to each student participating in the lottery and shall notify the parent or guardian of the number assigned to their child(ren).
- [iv.] **iii.** Before conducting the lottery, the choice district may give **enrollment** preference to **eligible** siblings of **choice** students [already enrolled in and attending the choice district].
- (1) [In the event that] **If** the choice district elects to give preference to **eligible** siblings of **choice** students [already enrolled in and attending the choice district] and [there are] no spaces **are** available after granting permission to participate in the choice program to **eligible** siblings [of students already enrolled in and attending the choice district], [then] the choice district shall conduct a lottery first for the **eligible** siblings only, to determine the selection of students for participation and placement on the waiting list.
- (2) [In the event that] **If** the choice district elects to give preference to **eligible** siblings of **choice** students [already enrolled in and attending the choice district] and [there are] no spaces **are** available after granting permission to participate in the choice program to **eligible** siblings [of students already enrolled in and

attending the choice district], [then] the choice district shall conduct a lottery [first] for the remaining applicants to assign them a place on the waiting list.

- iv. Before conducting the lottery, the choice district may give enrollment preference to resident students who moved out of the choice district and want to remain enrolled in the choice district as choice students.**
  - (1) If the choice district elects to give enrollment preference to resident students who moved out of the choice district and want to remain enrolled in the choice district as choice students and no spaces are available, and the choice district elects to give preference to eligible siblings of choice students, the choice district shall conduct a lottery first for the eligible siblings, pursuant to (a)2iii above, and second for the resident students, pursuant to (a)2iv above, to determine the selection of students for participation and placement on the waiting list.**
  
- v. Before conducting the lottery, a choice district in a receiving relationship with a sending choice district may give enrollment preference to a choice student currently enrolled in its sending choice district who reaches the terminal grade and applies for secondary school in that receiving choice district.**
  - (1) If the receiving choice district elects to give enrollment preference to a choice student, pursuant to (a)2v above, and no spaces are available, and the choice district elects to give preference to eligible siblings of choice students, the receiving choice district shall conduct a lottery first for the eligible siblings pursuant to (a)2iii above, and second for students eligible pursuant to (a)2iv and v above.**
  
- vi. The choice district shall develop a waiting list based on the lottery results.**

(a) The Commissioner, **or the Commissioner's designee**, shall establish a student application timeline each year no later than September 1. **The timeline shall include the dates for the student application deadline, the lottery pursuant to N.J.A. C. 6A:12-3.1(a)2, and (b), (c), and (d) below.**

(b) **The choice district shall send a notice of acceptance, rejection, or placement on the waitlist to the parent or guardian of every student who submitted a choice application by the deadline established pursuant to (a) above. Applicants who are accepted to enroll in the choice district shall send notice of their intent to enroll to the choice district.**

[(b)] (c) [Within five business days of the due date set by the Commissioner pursuant to the timeline in (a) above, the] **The choice district shall provide to the Department electronic notification of the number of choice students who send notice of their intent to enroll.**

[(c)] (d) The choice district shall provide **to each sending district** written notification [of receipt] of each notice [of enrollment to each sending district's board of education within 10 days of the due date for receipt of such notice of enrollment] **of intent to enroll received** from a choice student **who is a** resident [in that] **of the** sending district.

[(d)] (e) A choice student applicant may [seek from] **apply to** the Commissioner, **or the Commissioner's designee**, by [a] showing [of] good cause **for** a waiver of the student application deadlines [established] in the timeline [in] **at** (a) above.

1. **If the student receives a waiver of the student application deadline and the choice district is unable to receive funding for the student as a choice student for the current and/or subsequent school year, the choice district may enroll the student as an unfunded choice student in the corresponding year and automatically convert the student's enrollment to a funded choice student if the student remains in the choice program.**

### 6A:12-[4.4]3.3 Choice district procedures for students not meeting eligibility requirements

(a) If seats remain available in a choice district after exhausting the list of applicants who meet the requirements [of] **at** N.J.A.C. 6A:12-2.2(a), including [those] **applicants** on any waiting list [that has

been] established through the application process, [then] the choice district may [elect to] fill the seats with public school students who do not meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)**, and with [non-public] **nonpublic** school students.

(b) Choice districts may accept applications from public school students who do not meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)** and/or [non-public] **nonpublic** school students until the deadline [set] **established** by the Commissioner, **or the Commissioner’s designee, pursuant to N.J.A.C. 6A:12-3.2(a)**.

(c) Upon the receipt of an application from a public school student who does not meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)** or a [non-public] **nonpublic** school student, the choice district shall send [a letter] to the **student’s** parent [of the student including] **or guardian, a letter that includes** the following information:

1. Whether the choice district will consider public school students who do not meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)** and [non-public] **nonpublic** school students for admission to the **choice** district. If the choice district has not yet decided, **it shall** inform the parents of when the decision is expected to be made;
2. [That public] **Public** school students who do not meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)** and [non-public] **nonpublic** school students [will] **shall** not be considered for admission until the choice district has conducted the application cycle and has exhausted its waiting list of students who meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)** for the grade level to which they have applied;
3. [That the] **The** choice district may need to conduct a lottery to select the students to be offered admission to the choice district depending on the seats available and the number of applications received from public school students who do not meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)** and/or [non-public] **nonpublic** school students; and
4. [That] **The choice district shall fully inform** the parents of [those] public school students who do not meet the requirements [of] **at N.J.A.C. 6A:12-2.2(a)** and [non-public] **nonpublic** school students [will be fully informed] of the lottery process in the event [that] **the choice district**

**conducts** a lottery, [is required,] the date it will be held, and what number has been assigned to the applicant.

6A:12-[4.1]3.4 Sending district [procedures] **restrictions on student participation in the choice program**

- (a) A sending district may not restrict the participation of its students in the choice program where the district's students provide written notice of intent to apply to a specialized educational program that is offered by the choice district and not offered in the sending district.
- (b) The calculation of the enrollment of a sending district shall be based on the enrollment count as reported on the Application for State School Aid in October preceding the school year during which the restriction on enrollment shall be applicable.
  - 1. Students from the sending district who are already enrolled in and attending a school choice program shall not be included in the newly calculated number of students eligible to attend a school choice district.
  - 2. When the multiplication of the grade level enrollment by the percentage established in the sending district's resolution adopted pursuant to N.J.S.A. 18A:36B-21.a(1) results in a number with a decimal, the number will be rounded to the next whole number.
  - 3. The sending district's resolution restricting its students' participation may not be applied to the final grade level available in the sending district.]
- (a) **The district board of education of a sending district may seek to limit the number of students participating in the choice program to a maximum of 10 percent of the number of students per grade level per year and 15 percent of the total number of students enrolled in the sending district, based on the Application for State School Aid of the year prior to the first student participating in the choice program, pursuant to N.J.S.A. 18A:36B-21.a. The district board of education of a sending district seeking to limit student participation in the choice program shall submit to the Commissioner, or the Commissioner's designee, the following documents:**

1. A resolution adopted by the district board of education specifying the limit on the number of students enrolled in the school district who may participate in the choice program; and
2. Supportive documentation that may include, but is not limited to, evidence of the choice program's impact on the following:
  - i. The sending district's student enrollment;
  - ii. The sending district's student achievement;
  - iii. The diversity of the sending district's student population;
  - iv. The number or quality of programs, course offerings, or classes the sending district offers;
  - v. The number or quality of the services the sending district provides;
  - vi. The sending district's operations; and
  - vii. The sending district's fiscal conditions.

(b) In determining whether to grant approval of a sending district's limiting resolution, the Commissioner, or the Commissioner's designee, shall evaluate the documentation submitted pursuant to (a) above and determine, pursuant to N.J.S.A. 18A:36B-21, if the sending district has demonstrated that the limiting resolution:

1. Is in the best interest of the sending district's students;
2. Will not adversely affect the school district's programs, services, operations, or fiscal conditions; and
3. Will not adversely affect or limit the diversity of the remainder of the sending district's student population who do not participate in the choice program.

(c) [Where] If a **sending** district [board of education of a sending district has adopted a resolution pursuant to N.J.S.A. 18A:36B-21.a(1)] **has received approval from the Commissioner, or the Commissioner's designee**, to impose a limit on the number of its students participating in the choice program [pursuant to this subsection, and when the student notices of intention to participate in the choice program exceed that limit], the sending district shall[:] **use this limit every year unless there is an increase of its**

**student enrollment beyond the enrollment count used to calculate the limiting resolution pursuant to (a)1 above.**

**1. If there is an increase of the choice district's student enrollment beyond the enrollment count used to calculate the limiting resolution pursuant to (a)1 above, the sending district shall apply the choice program enrollment restriction percentages contained in the approved resolution to the enrollment counts as reported on the Application for State School Aid in October preceding the school year during which the restriction on enrollment will be applicable.**

**2. If the notices of student intention to participate in the choice program exceed the established limit pursuant to this section, the sending district shall:**

[1.] **i.** Hold a public lottery to determine the selection of students for participation in the choice program;

[2.] **ii.** Notify the parent or guardian of every student who has submitted notice of intent to participate in the choice program of the date and time of the lottery;

[3.] **iii.** Assign a number to each student participating in the lottery and notify the parent or guardian of the number assigned to their child(ren); and

[4.] **iv.** Develop a waiting list based on the lottery.

(d) [Where] **If a sending district [board of education of a sending district has adopted a resolution] has received approval from the Commissioner, or the Commissioner's designee, to impose a limit on the number of [its] students participating in the choice program [pursuant to this subsection,] and [when] the [student] notices of student intention to participate in the choice program exceed [that] the established limit, before conducting the lottery, the sending district may give preference to eligible siblings [[of [its] resident students [already] who are presently enrolled in and attending [the] a choice district]]. If the choice district elects to give enrollment preference to eligible siblings of choice students, the sending district also shall give preference to eligible siblings [[of resident students who are presently enrolled in and attending the choice district]]. This provision shall apply only to choice**

**students and eligible siblings who would be attending the same choice district or two choice districts that are in a send-receive relationship.**

1. [In the event that the sending district elects to give preference to siblings of its resident students already enrolled in and attending the choice district and] **If** there are more **eligible** sibling applicants than [there are] available spaces, [then] the sending district shall conduct a lottery first for the **eligible** siblings only to determine the selection of students for participation and for placement on the waiting list.
  2. [In the event that the sending district elects to give preference to siblings of its resident students already enrolled in and attending the choice district and] **If** there are no spaces available after granting permission to participate in the choice program to **eligible** siblings [of resident students already enrolled in and attending the choice district], [then] the sending district[s] shall conduct a lottery for the remaining **eligible sibling** applicants to assign them a place on the waiting list.
- (e) Prior to any lottery [that may be] held according to this section, the sending district shall verify that the student is enrolled in the sending district and was reported on the Application for State School Aid in October of the current school year.
- (f) Prior to any lottery that may be held according to this section, the sending district shall notify the applicants of the date and time of such lottery.
- (g) [Any] **The sending district shall conduct any** lottery held [according] **pursuant** to this section [must be held] prior to the deadline [set] **established** by the Commissioner, **or the Commissioner's designee**, for written notification to the parent [that the student is eligible] **or guardian regarding the student's eligibility** to participate in the [school] choice program.

Subchapter [5.] **4. Choice Student [Post Enrollment] Post-Enrollment Policies**

6A:12-[5.1]**4.1 Choice student [enrollment] post-enrollment**

- (a) Once enrolled in a choice district, the choice student may remain enrolled and [is] **shall not be** required to submit annual or periodic applications.



- (b) [Upon acceptance of a choice student, the] **A** choice district [is obligated to] **shall** retain [the] **an accepted** choice student until [graduation] **the choice district's terminal grade** or [until] the choice student voluntarily withdraws.
- (c) [In the event of termination of] **If** the choice program **is terminated** in [that] **a choice** district or Statewide, any **choice** student enrolled in [that] **the** choice district shall be entitled to remain enrolled [in that district] until [graduation] **the school district's terminal grade**.
- (d) [In the event that a] **A** public school student who is currently a choice student attending school in a choice district **and who** moves to another **school** district[, that public student is] **shall be** eligible to remain in the choice district as a choice student without application **until the terminal grade offered by the choice district**.
- (e) A resident student of a choice district **who attends a specialized educational program and/or grade that has been approved for choice students and** who moves during the school year may [be allowed] **choose** to remain in the choice district until the end of the school year **as an unfunded choice student**. The student may apply to the choice program as a funded **choice** student for the next school year. If the student moves after the application deadline [or otherwise] **and the choice district** is unable to receive funding **for the student** as a choice student [in the school district] for the subsequent school year, the choice [school] district may enroll the student as an unfunded choice student in that year, and automatically convert the student's enrollment to a funded choice student if [he or she] **the student** remains in the choice program.

#### [Subchapter 6. Appeals]

##### [6A:12-6.1 Appeals from Commissioner determinations]

An appeal of any determination by the Commissioner not to grant an application for participation in the choice program may be filed by an eligible choice district applicant according to N.J.A.C. 6A:4.]

[6A:12-6.2 Appeals from denial of enrollment

An appeal of any denial of a choice student applicant for enrollment in a choice district may be filed by the parent or legal guardian with the Commissioner in accordance with N.J.A.C. 6A:3.]

Subchapter [7.] **5. Administrative Responsibilities of Choice Districts**

6A:12-[7.1]**5.1 General provisions**

- (a) Choice districts shall accept all credits toward graduation [that were] awarded by another district board of education for each **accepted** choice student [it accepts].
  - 1. Choice districts shall award a diploma to a choice student [participating in the program if that student] **who** meets the graduation requirements of the choice district and of the State of New Jersey.
- (b) A choice district shall establish and maintain a parent information center, **in accordance with N.J.S.A. 18A:36B-23.**
  - [1. The center shall collect and disseminate information about participating programs and schools, and shall assist parents and legal guardians in submitting applications for enrollment of students in an appropriate program and school.
  - 2. The information about participating programs and schools shall be posted on the choice district's website.]
- (c) [A choice district shall file reports with the Department at] **At** the end of each **student** application cycle[. A], a choice district['s] **shall file with the Department** reports [shall] **that** include demographic and student participation information, fiscal and programmatic information, and updates on the number of available openings.

## Subchapter [8.] 6. Transportation

### 6A:12-[8.1]6.1 Student transportation

Each sending district shall [have the responsibility] **be responsible** for the transportation **or aid in lieu of transportation** of enrolled choice students who are eligible for transportation services both to and from the choice school in which [that] **the** student is accepted[. Each sending district shall provide transportation or aid in lieu of transportation], in accordance with N.J.S.A. [18A:36A-13] **18A:36B-22** and N.J.A.C. 6A:27-4.

## Subchapter [9.] 7. Funding

### 6A:12-[9.1]7.1 General provisions

- (a) Choice students participating in this program shall qualify for State aid pursuant to N.J.S.A. 18A:36B-14 et seq. The sending district will receive transportation aid pursuant to N.J.A.C. 6A:12-[8.1]6.1.
- (b) The sending district shall maintain fiscal responsibility for any choice student enrolled in, or determined to require, a private day or residential school, except [that] the choice district will be required to contribute any State aid received for [such a] **the** student and the sending district will be responsible for the balance.