

Notice of Proposed Substantial Changes Upon Adoption for Readoption with Amendments of N.J.A.C. 6A:32, School District Operations

The following is the accessible version of the notice of proposed substantial changes upon adoption related to the readoption with amendments of N.J.A.C. 6A:32.

Proposals Section

Education

State Board of Education

Notice of Proposed Substantial Changes Upon Adoption to Proposed Amendments

School District Operations

Proposed Changes: N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2

Proposed: August 16, 2021, at 53 N.J.R. 1307(a).

Authorized By: New Jersey State Board of Education, Angelica Allen-McMillan, Ed.D., Acting Commissioner, Department of Education, Acting Secretary, State Board of Education.

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

Submit written comments by April 8, 2022, to:

Dr. Jordan Schiff, Assistant Commissioner

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

The Department now is proposing substantial changes to the proposed amendments without adopting any part of the original rulemaking at this time. The Department is proposing substantial changes to certain rules at N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2 based on comments and agency-initiated changes.

In response to comments received from the public, the Department is proposing amendments to terms used at N.J.A.C. 6A:32-12.1. Additionally, the Department is proposing agency-initiated changes at N.J.A.C. 6A:32-5.1, 12.1, 13.1, and 13.2.

At N.J.A.C. 6A:32-5.1(e), the existing second sentence starts with “Upon acquisition of a standard certificate,” however, this text was mistakenly omitted from the published text of the notice of proposal but should have been proposed for deletion. The Department also proposes new N.J.A.C. 6A:32-13.1(c)3 and 13.2(b)3 to provide detail on the Commissioner-established criteria that district boards of education must use when creating their annual virtual or remote instruction plans and submitting them to the Commissioner for approval.

This notice of proposed substantial changes is published pursuant to N.J.S.A. 52:14B-4.10.

The following is a summary of the comments related to the proposed substantial changes and the Department’s responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Melanie M. Schulz, Director of Government Relations, New Jersey Association of

School Administrators

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

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

Response: The Department agrees with the commenters. Therefore, the Department proposes to delete “auxiliary teacher” from proposed new N.J.A.C. 6A:32-12.1(c)1. (See also Agency-Initiated Change 2)

Summary of Agency-Initiated Changes:

1. The Department proposes, at N.J.A.C. 6A:32-5.1(e), to delete “Upon acquisition of a standard certificate” at the beginning of the second sentence because the original notice of proposal to delete the phrase was mistakenly omitted from the published notice of proposal.
2. The Department proposes, at proposed new N.J.A.C. 6A:32-12.1(c)1, to replace “an auxiliary teacher or a teacher aid” with “or paraprofessional.” “Paraprofessional” is defined at N.J.A.C. 6A:32-2.1 as a school or classroom aide who assists appropriately certified personnel with the supervision of student activities. The Department has

determined that using “paraprofessional” will provide greater clarity and will support the section’s purpose, which is to allow for approval of an increased kindergarten class size with additional supports for the teacher.

3. The Department proposes new N.J.A.C. 6A:32-13.1(c)3 to provide detail on the Commissioner-established criteria that district boards of education must use when creating their annual virtual or remote instruction plans. The additional criteria will ensure that school districts are providing instruction that meets the requirements of the New Jersey Student Learning Standards, meeting the digital needs of students, meeting the needs of English language learners (ELLs) and students with disabilities, communicating with families, establishing attendance policies, delivering meals, maintaining buildings, and meeting other district-specific needs. As stated at proposed N.J.A.C. 6A:32-13.1(a), “district board of education” refers to district boards of education, charter school and renaissance school project boards of trustees, and private agencies that provide educational services by means of public funds. The Department also proposes to recodify proposed N.J.A.C. 6A:32-13.1(c)3 as new paragraph (c)4.
4. The Department proposes new N.J.A.C. 6A:32-13.2(b)3 to provide detail on the Commissioner-established criteria that approved private schools for students with disabilities (APSSDs) must include when creating their annual virtual or remote instruction plans. The proposed new regulation will apply the criteria proposed at N.J.A.C. 6A:32-13.1(c)3 to the annual virtual or remote instruction plans developed by APSSDs. The Department also proposes to recodify proposed N.J.A.C. 6A:32-13.2(b)3 as new paragraph (b)4.

Effect of Proposed Changes on Impact Statements Included in Original Proposal

The changes to the proposed amendments will not affect the impact statements included in the original notice of proposal. The changes amend the terms used in the rules related to kindergarten programs; provide detail on the Commissioner-approved components of school district plans for providing virtual or remote instruction; and delete a phrase because the original proposed change to delete the phrase was mistakenly omitted from the published notice of proposal. None of these changes affect the Social, Economic, Jobs, or Agriculture Industry Impacts; the Federal Standards Statement; the Regulatory Flexibility Statement; or the Housing Affordability Impact, Smart Growth Development Impact, or Racial and Ethnic Community Criminal Justice and Public Safety Impact Analyses, as published in the original notice of proposal.

Full text of the proposed substantial changes to the proposed amendments follows (additions to proposal indicated in italicized boldface ***thus***; deletions from proposal indicated in italicized cursive brackets {*thus*}) (Note: Original additions indicated in boldface **thus** and original deletions indicated in brackets [thus].):

Subchapter 5. Seniority

6A:32-5.1 Standards for determining seniority

(a)-(d) (No change from proposal.)

(e) [The holder of] **An employee who holds** an emergency **or provisional** certificate shall not be entitled to seniority rights, but the years of employment under the emergency **or provisional** certificate shall count toward seniority when [he or she] **the employee**

becomes the holder of a standard certificate, { . Upon acquisition of a standard certificate }
[, any period of service under a provisional certificate] as defined [in] **at** N.J.A.C. 6A:9,
Professional Standards[, shall also be counted toward seniority].

(f) – (m) (No change from proposal.)

Subchapter 12. [Student Behavior] **Kindergarten**

(OAL Note: All references at N.J.A.C. 6A:32-12.1 to *Abbott v. Burke, Abbott*, or the case citation for the same are intended to be permanently italicized and are not proposed changes.)

6A:32-12.1 [Student attendance] **Kindergarten programs**

(a) – (b) (No change from proposal.)

(c) School districts that are not subject to the *Abbott v. Burke* decisions at 153 *N.J.* 480 (1998) and 177 *N.J.* 578 (2003) (“*Abbott* decisions”) or the provisions at N.J.A.C. 6A:13-3.2 shall maintain a maximum enrollment for a kindergarten classroom of 25 students per teacher. School districts subject to the *Abbott* decisions or in which 40 percent or more of the students are “at-risk” as defined at P.L. 2007, c. 260 shall follow the provisions for kindergarten at N.J.A.C. 6A:13-3.2.

1. School districts that are not subject to the *Abbott* decisions or the provisions at N.J.A.C. 6A:13-3.2 may submit a written request to the executive county superintendent for permission to increase the number of students in a kindergarten classroom, provided another teacher, {an auxiliary teacher,} or a {teacher aide} *paraprofessional* is employed full-time to provide for the increased size.

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

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

(a) – (b) (No change from proposal.)

(c) **The district board of education may apply to the 180-day requirement established pursuant to N.J.S.A. 18A:7F-9.b, one or more days of virtual or remote instruction under the following conditions:**

1. (No change from proposal.)

2. **The virtual or remote instruction meets the Commissioner-established criteria for the occurrence of one of the events at (b) above; {and}**

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

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

(1) The design of synchronous and/or asynchronous virtual or remote learning plans that will maximize student growth and learning;

(2) How the school district will continuously measure student growth and learning in a virtual or remote instruction environment; and

(3) The school district’s plan for measuring and addressing any ongoing digital divide issue(s), including a lack of access to the internet, network, or devices;

ii. Addresses the needs of students with disabilities and includes descriptions of the following:

- (1) *The delivery of virtual or remote instruction in order to implement, to the greatest extent possible, students' individualized education programs (IEPs), including material and platform access;*
 - (2) *The methods used to document IEP implementation, including the tracking of student progress, accommodations, and modifications;*
 - (3) *How case managers follow up with parents to ensure services are implemented, to the greatest extent possible, in accordance with IEPs; and*
 - (4) *How the school district plans to conduct IEP meetings, evaluations, and other meetings to identify, evaluate, and/or reevaluate students with disabilities;*
- iii. *Addresses the needs of English language learners (ELLs) and includes descriptions of the following:*
- (1) *How the school district includes an English as a second language (ESL) and/or bilingual education program aligned with State and Federal requirements to meet the needs of ELLs;*
 - (2) *The process to communicate with parents of ELLs, including providing translation materials, interpretative services, and information available at the parent's literacy level;*
 - (3) *The use of instructional adaptations, for example, differentiation, sheltered instruction, Universal Design for*

- Learning, access to technology, and strategies to ensure ELLs access the same standard of education as non-ELL peers; and*
- (4) The training for teachers, administrators, and counselors to learn strategies related to culturally responsive teaching and learning, social-emotional learning, and trauma-informed teaching for students affected by forced migration from their home country;*
- iv. Accounts for student attendance in accordance with (d) below and includes the following:*
- (1) A description or copy of the school district’s attendance policies, including how the school district will determine whether a student is present or absent during virtual or remote instruction, and how a student’s attendance will factor into promotion, retention, graduation, discipline, and any other decisions that will reflect the student’s performance;*
- v. Describes how the school district is communicating with the parents when a student is not participating in virtual or remote instruction and/or submitting assignments;*
- vi. Includes a plan for the continued safe delivery of meals to eligible students;*
- vii. Includes an outline of how buildings will be maintained throughout an extended period of closure; and*

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

{3.} 4. (No change in text from proposal.)

(d) (No change from proposal.)

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

(a) (No change from proposal.)

(b) **The APSSD may apply one or more days of virtual or remote instruction to qualify as a day of instruction for the purposes of calculating tuition pursuant to N.J.S.A. 18A:46-21.1.a, under the following conditions:**

1. – 2. (No change from proposal.)

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

{3.} 4. (No change in text from proposal.)

(c) – (d) (No change from proposal.)