

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

The following is the accessible version of the notice of adoption related to the readoption with amendments of N.J.A.C. 6A:17. The notice includes two sections – [comment and response form](#) and [text of the amendments made upon adoption](#).

Education

State Board of Education

Education for Homeless Children and Students in State Facilities

Readoption with Amendments: N.J.A.C. 6A:17

Adopted New Rules: N.J.A.C. 6A:17-4

Proposed: October 18, 2021, at 53 N.J.R. 1757(a).

Adopted: March 4, 2022, by the New Jersey State Board of Education, Angelica Allen-McMillan, Acting Commissioner, Department of Education, and Acting Secretary, State Board of Education.

Filed: March 4, 2022, as R.2022 d.046, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.5).

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

Effective Dates: March 4, 2022, Readoption;

April 4, 2022, Amendments and New Rules.

Expiration Date: March 4, 2029.

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

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

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

2. Comment: The commenter stated that the proposed readoption with amendments at N.J.A.C. 6A:17 will have some benefits, specifically the clarification of tuition responsibility for homeless youth and the creation of a new subchapter focusing on children in resource family care. The commenter expressed concern that other parts of the rulemaking does not efficiently effectuate, and may even harm, the intention to provide a

thorough, efficient, and equitable education to children at risk for not receiving a public education. (2)

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

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

The commenter acknowledged that youth in detention alternatives arguably fit the definition of homelessness at N.J.A.C. 6A:17-2.2(a)1, which includes all children and

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

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

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

Response: “Youth” and “unaccompanied youth” are not synonymous terms. While the

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

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

Response: The Department thanks the commenter for identifying the error.

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

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

7. Comment: The commenter requested amendments at N.J.A.C. 6A:17-2.4(b) because “homeless child or youth” implies that a determination has already been made that the child or youth is homeless. The commenter stated that the proposed amendments place the power to make the initial determination of homelessness exclusively on the school

district of residence. The commenter requested that the Department replace the beginning of the rule with “[w]hen a school district liaison is notified or otherwise becomes aware that a child or youth potentially classified as homeless within the meaning at N.J.A.C. 6A:17-2.2 resides in the liaison’s school district.” (1)

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

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

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

9. Comment: The commenter expressed concern with the proposed amendments at N.J.A.C. 6A:17-2.7(a) and (b) that will change the timeline to determine disputes about a child’s or

youth's homeless status and the school district of enrollment. The commenter stated that existing rules require the Homeless Education Coordinator to determine homelessness status "immediately" and the executive county superintendent to determine disputes regarding district of residence "immediately, if possible, but no later than within 48 hours." The commenter also stated that the existing requirement for a determination immediately, or within 48 hours, is consistent with ESSA Title IX, Part A, section 9102 (3)(E), and Part B, section 11432(g)(3)(E), which require the dispute resolution process to be carried out "as expeditiously as possible." The commenter further stated that changing both timelines to "within five business days of the receipt of the dispute" will unnecessarily delay educational stability and is inconsistent with the Federal intention that disputes are resolved "immediately" or "as expeditiously as possible."

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

Response: The Department agrees with the commenter. The Department, at N.J.A.C.

6A:17-2.7(a) and (b), will not adopt the amendments that would have replaced “immediately” and “immediately, if possible, but no later than 48 hours,” respectively, with “within five business days of receipt of the dispute.”

10. Comment: The commenter suggested an amendment at N.J.A.C. 6A:17-2.7(c) to delete “homeless” before “child or youth” to reflect that a dispute may exist as to homelessness. (1)
Response: The Department thanks the commenter for the suggestion. As N.J.A.C. 6A:17 was set to expire on March 9, 2022, the Department will consider the suggested amendment as part of a separate rulemaking. The Department plans to conduct extensive stakeholder engagement toward the end of 2022 and expects to initiate a new rulemaking for N.J.A.C. 6A:17 in late 2023.
11. Comment: The commenter expressed support for the proposed amendments at N.J.A.C. 6A:17-2.8 that clarify which school must pay tuition for a homeless student, the duration of that responsibility, and when the State assumes fiscal responsibility. The commenter stated that the proposed amendments will reduce harmful delays in students’ receipt of education services that often are caused by disputes about payment of tuition and transportation. (2)
Response: The Department thanks the commenter for the support.
12. Comment: The commenter stated that the second sentence at N.J.A.C. 6A:17-2.8(a), as proposed for amendment, appears to suggest that a school district in which the parent has established a permanent residence would pay tuition to the school district of enrollment. The commenter stated that establishment of a permanent residence terminates homelessness and the student’s ability to remain enrolled out-of-district, unless an

exception applies, such as remaining enrolled in the school district of residence until the end of a school year. The commenter requested that the second sentence at N.J.A.C. 6A:17-2.8(a) be replaced with the following: “At that time, the original school district of residence shall no longer pay tuition to the school district of enrollment. Where a parent is deemed domiciled in another school district, that school district shall pay tuition to the school district of enrollment.” (1)

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

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

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

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

the cited statutory provisions and adds confusion. (1)

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

15. Comment: The commenter stated that DCP&P may place students into settings classified as “State facilities” as defined at N.J.A.C. 6A:17-1.2 and covered at N.J.A.C. 6A:17-3.

The commenter requested that the Department clarify the overlap between the rules. (1)

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

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

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

17. Comment: The commenter suggested that N.J.A.C. 6A:17-3, Educational Programs for Students in State Facilities, be amended to also apply to students held in county juvenile detention centers across the State. The commenter stated that there are many more students attending school in county detention centers than in State facilities. The

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

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

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

The commenter further stated that the Department recognized that youth leaving confinement face “barriers to school reentry in both reenrollment and reintegration” and that schools may be reluctant to reenroll students due to prior behavioral issues and issued guidance to assist LEAs in transitioning students from confinement back to local schools. The commenter also stated that although the guidance (New Jersey School Reentry Strategies to Support Students Returning to School After Confinement) includes many helpful suggestions that school districts can implement to ensure students are reenrolled and reintegrated into their home school districts, the guidance is a set of recommendations that school districts can choose to act on and are not requirements imposing obligations. The commenter further stated that this information alone will not be enough to ensure that students who have experienced behavioral challenges or school issues will not remain at risk of being denied the right to education. (1)

Response: The Department is committed to providing resources for a student's successful

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

19. Comment: The commenter urged the Department to set forth due process procedures for students in State facilities and county detention centers to protect the students' constitutional right to an education both within the State facility and upon return to the school district. The commenter stated that N.J.A.C. 6A:17-3 should set forth a procedure by which parents or students can contest an individualized program plan (IPP) as failing to comply with regulatory, statutory, or constitutional requirements. The commenter also stated that the rules currently require that parents receive written notice of an IPP or its revision, but also allow implementation whether parental consent has been granted. The commenter further stated that the rules fail to provide a procedure through which a parent can challenge the IPP as insufficient.

The commenter also stated that N.J.A.C. 6A:17-3 should ensure that any student returning to a school district from a State facility is afforded full due process if the school district seeks to place the student anywhere other than the general education program. The commenter referenced complaints that some districts place returning students in

alternative education programs without providing notice of the reasons for the determination and a hearing to challenge the determination's appropriateness. The commenter further stated that the involuntary transfer to alternative schools is similar to an expulsion or suspension, which can also lead to an alternative school placement.

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

Response: The Department disagrees that N.J.A.C. 6A:17 needs to be amended to provide a separate due process procedure for students in State facilities and juvenile detention centers because complaint processes already exist. An adult student or a student's parent may utilize the Department's existing complaint processes to address any complaint that may arise. Pursuant to N.J.A.C. 6A:14, issues related to special education may be submitted to the Office of Special Education through [email](#). In accordance with N.J.A.C. 6A:3, issues not related to special education may be submitted to the Office of

Controversies and Disputes through [email](#). Therefore, there is no need for an additional due process requirement at N.J.A.C. 6A:16.

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

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

The commenter also suggested an amendment to the end of the second sentence at N.J.A.C. 6A:17-2.7(c) to add "and neither tuition nor transportation costs may be assessed

against a parent or youth with respect to any period of enrollment governed hereunder.” (1)

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

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

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

22. Comment: The commenter stated that the Federal Every Student Succeeds Act (ESSA) contemplates that, while the state welfare agency is the final decision-maker in the event of a dispute regarding the best interest determination, school districts play a substantive role in making this determination in concert with the state welfare agency. The commenter also stated that the rules at proposed N.J.A.C. 6A:17-4, Educational Stability for Children in Resource Family Care, suggest that the power to make a best interest determination lies exclusively with the Division of Child Protection and Permanency (DCP&P). The commenter further stated the proposed definition of “best interest determination” at N.J.A.C. 6A:17-1.2 refers only to DCP&P as the decider. The commenter also stated that school districts should be given more substantive responsibility in contributing to the best interest determination in furtherance of the goals of Federal law. The commenter recognized that N.J.S.A. 30:4C-26b may also need to be amended. (1)

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

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

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

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

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

25. Comment: The commenter expressed concern that the proposed Subchapter 4 does not include children and youth awaiting foster care placement. The commenter stated that “resource family care” is defined at N.J.A.C. 6A:17-1.2 as “24-hour substitute care for

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

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

The commenter further stated that the exclusion of children and youth awaiting placement seems to be inadvertent. The comment and response form dated August 4,

2021, states the following: “The proposed amendments will ensure the educational stability of a student placed in resource family care or awaiting placement. Previously, students who were residing in a temporary location while awaiting their resource family care placement were determined to be homeless. The proposed amendments at N.J.A.C. 6A:17-2.2 will ensure continued enrollment without interruption to the students’ education while awaiting their resource family care placement.” The commenter suggesting that rephrasing language in proposed Subchapter 4 to explicitly cover children and youth placed and awaiting placement will conform to the intent of the proposed amendment and close this gap. (2)

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

Federal Standards Statement

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

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:17.

Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

Subchapter 1. General Provisions

6A:17-1.2 Definitions

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

...

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

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

...

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

Subchapter 2. Education of Homeless Children and Youths

6A:17-2.5 School district enrollment

(a) The chief school administrator of the school district of residence, or the chief school administrator's designee, shall decide in which school district the homeless child or youth shall be enrolled as follows:

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

2. – 3. (No change from proposal.)

(b) – (h) (No change from proposal.)

6A:17-2.7 Disputes and appeals

(a) When a dispute occurs regarding the determination of homelessness or the determination of the school district of enrollment made by the school district of residence, the chief school administrator(s), or the chief school administrator's designee(s), of the involved school district(s) or the child's or youth's parent(s) shall immediately notify the executive county superintendent. In consultation with the Department's McKinney-Vento Homeless Education Coordinator, or the coordinator's designee, the executive county superintendent shall ***immediately*** decide the child's or youth's status ***[within five business days of receipt of the dispute]***. If a dispute remains between the parent and the involved school district(s) following the executive county superintendent's determination, the parent or the involved district board(s) of education may appeal to the Commissioner for determination pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

(b) When a school district designated as the school district of residence disputes its designation as the school district of residence, or where no designation can be agreed upon by the involved school districts, the chief school administrator(s), or the chief

school administrator's designee(s), of the involved school districts shall immediately notify the executive county superintendent. The executive county superintendent shall make a determination ***immediately, if possible, but no later than*** within ***[five business days of receipt of the dispute]* *48 hours*** and, when necessary, in consultation with the Department's Homeless Education Coordinator, or the Coordinator's designee.

i. 1. – 2. (No change from proposal.)

(c) – (d) (No change from proposal.)

Subchapter 3. Educational Programs for Students in State Facilities

6A:17-3.2 Educational program objectives and requirements

(a) – (b) (No change from proposal.)

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

(d) – (l) (No change from proposal.)

Subchapter 4. Educational Stability for Children in Resource Family Care

6A:17-4.2 School district responsibilities

(a) Each district board of education shall:

1. (No change from proposal.)

2. Develop policies and procedures to ensure the following for children in resource family care:

i. – iii. (No change from proposal.)

- iv. Continued enrollment for the duration of placement in resource family care and a determination of whether children who are reunited with their parent(s) during the academic year can continue enrollment in the school district, in accordance with ESSA § 1112(c)(5) and N.J.A.C. 6A:17-
*[2.5(h)]**4.4(c)*.