

POLICY GUIDE

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**Americans with Disabilities Act Rights of Persons
With Handicaps or Disabilities/Policy on Non-Discrimination**

Dec 16

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[See POLICY ALERT Nos. 136, 151, 167 and 210]

1510 AMERICANS WITH DISABILITIES ACT RIGHTS OF PERSONS WITH HANDICAPS OR DISABILITIES/POLICY ON NON-DISCRIMINATION

It is the policy of the Board of Education that no qualified ~~handicapped or disabled person~~ **individual with a disability will** ~~shall~~, on the basis of ~~handicap or disability~~, be excluded from participation in, be denied the benefits of, or be subjected to discrimination in employment or under any program, activity, or ~~services~~ vocational opportunities sponsored by this Board. The Board ~~will~~ **shall** comply with ~~§504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Amendments Act of 2008 (hereafter referred to as the Act).~~ It shall also comply with the Individuals with Disabilities Education Act through the implementation of Policy No. 2460 and Regulations Nos. 2460 through 2460.14.

Notice of the **Board Policy 1530 – Equal Educational Opportunities and Board Policy 5750 – Equal Educational Opportunity** ~~Board's policy on nondiscrimination in employment (Policy and Regulation No. 1530) and education (Policy and Regulation No. 5750)~~ will be included in the Board policy manual, posted throughout the district, and referenced in any district statement regarding the availability of employment positions or educational services.

Employment

No employee or candidate for employment ~~will~~ **shall** be discriminated against in recruitment, hiring, advancement, discharge, compensation, **job** training, transfer, or any other term, condition, or privilege of employment solely **on the basis of a disability** ~~because of his/her handicap/disability~~, provided the employee or candidate can, with or without reasonable accommodation, perform the essential functions of the position sought or held.

No candidate for employment ~~will~~ **shall** be required to answer a question or submit to an examination regarding a ~~handicap/disability~~ except as such ~~handicap/disability~~ relates directly to **perform job-related functions** ~~the performance of the job sought~~. No candidate will be discriminated against on the basis of a ~~handicap/disability~~ that is not directly related to the essential function of the position for which he/she has applied.



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Reasonable accommodations, not directly affecting the educational and/or instructional program, **will** ~~shall~~ be made to accommodate employment conditions to the needs of qualified **individuals** ~~persons with handicaps/disabilities~~. Such accommodations may include, but are not limited to: ~~rescheduling; restructuring jobs; making facilities accessible; acquiring or modifying equipment; modifying examinations, training materials, policies and procedures; and providing readers or interpreters~~ **making existing facilities used by employees readily assessable to and usable by individuals with disabilities, job restructuring, part-time modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.**

The district will furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the district.

~~The Board employment policies and procedures shall comply with the Americans with Disabilities Act.~~

Facilities **Maintenance and** Accessibility

No qualified **individual with a disability** ~~handicapped/disabled person will~~ **shall**, because of the school district's facilities being inaccessible or unusable by ~~handicapped/disabled persons~~, be denied the benefits of, be excluded from participation in or otherwise be subjected to discrimination under any program or activity offered by the Board. No new facilities **will** ~~shall~~ be constructed that do not fully comply with ~~§504 of the Rehabilitation Act of 1973 and the American with Disabilities Act~~. Alterations to existing facilities or part thereof, **will** ~~shall~~ be altered in such a manner to the maximum extent feasible, that the facilities are readily accessible and usable by individuals with ~~handicaps/disabilities~~ who have a need to access Board facilities.

The district will maintain facilities and equipment required by the Act to be readily accessible to and usable by persons with disabilities.



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Service, Program, and Activity Access Educational Program Accessibility

The district will make reasonable accommodations so that services, programs, and activities are readily accessible and usable by qualified individuals with disabilities. The district is not required to provide personal devices or services of a personal nature to qualified individuals with disabilities.

~~No qualified handicapped/disabled person shall be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination in any activity offered by this district.~~

~~The Board has an affirmative obligation to evaluate a student who is suspected of having a handicap/disability to determine the student's need for special education and related services. The Board directs that all reasonable efforts be made to identify unserved children with handicaps/disabilities in this district who are eligible for special education and/or related services in accordance with Policy No. 2460 and Regulations Nos. 2460 through 2460.14, the Individuals with Disabilities Education Act, §504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.~~

~~Section 504 of the Rehabilitation Act requires the Board to address the needs of children who are considered handicapped/disabled under §504 and do not qualify for services under the Individuals with Disabilities Education Act. A student may be handicapped/disabled within the meaning of §504, and therefore entitled to regular or special education and related aids and services under the §504 regulation, even though the student may not be eligible for special education and related services under Part B of the Individuals with Disabilities Education Act.~~

~~No student will be denied, because of his/her educational handicap/disability, participation in co-curricular, intramural, or interscholastic activities or any of the services offered or recognitions rendered regularly to the students of this district.~~

~~There will be grievance procedures for persons alleging discriminatory acts by the Board and/or staff. The due process rights of students with handicaps/disabilities and their parents will be rigorously enforced.~~



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Evaluation and Compliance

The Superintendent or designee will evaluate district programs and practices on nondiscrimination, in accordance with law, and will report to the Board accordingly. Assurances of compliance will be submitted as required by law.

The district, with the assistance of interested persons, who may include individuals with disabilities or members of organizations representing individuals with disabilities, or other interested community members and staff, will evaluate its current services, policies, practices, and the effects thereof with regard to the requirements of the Act and make necessary modifications to meet the Act requirements. If such modifications would result in a fundamental alteration of the nature of the affected program or activity, or undue financial or administration burden, the district will provide access through means which would not result in a fundamental alteration or undue financial or administrative burden. 28 CFR §35.150(a)

For a period of at least three years following completion of the self-evaluation, the district will maintain on file, available for public inspection, a list of those interested persons consulted, a description of the areas examined and problems identified, and modifications made.

Enforcement - 28 CFR §35.107

The Board will designate the Supervisor of Pupil Services ~~is designated~~ as district coordinator for matters dealing with ADA compliance §504 and Title IX. The district coordinator ~~shall act as a compliance officer and~~ can be contacted at the following address or telephone number:

Office Address: _____

Telephone Number: _____

Grievance procedures are outlined in Regulation 1510.

~~A complaint regarding a violation of law and this policy will be subject to a complaint procedure that provides for the prompt and equitable resolution of disputes.~~



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~~The complainant shall be notified of his/her rights of appeal at each step of the process, and accommodations to the needs of handicapped/disabled complainants shall be made. A complainant shall be informed of his/her right to file a formal action for redress with or without recourse to the complaint procedure established by this policy and its accompanying regulation.~~

~~A complaint regarding the identification, evaluation, classification, or educational program of a student with a handicap/disability shall be governed by the due process rules of the State Board of Education, N.J.A.C. 6A:14-2.7 and the Office of Administrative Law, N.J.A.C. 17:6A-1 et seq., and by the procedural safeguard processes established by Board Policy No. 2460 and Regulation No. 2460.6 or the grievance procedures established in Regulation No. 1510.~~

Guarantee of Rights

The Board **will** ~~shall~~ not interfere, directly or indirectly, with any person's exercise or enjoyment of the rights protected by the **Act**. ~~§504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Individuals with Disabilities Education Act or Title IX.~~

The Board **will** ~~shall~~ not discriminate against any person for that person's opposition to any act or practice made unlawful by law or this **Ppolicy** or for that person's participation in any manner in an investigation or proceeding arising under **the Act**. ~~§504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Individuals with Disabilities Education Act or Title IX.~~

The district is not required to permit an individual to participate in or benefit from the district's services, programs, or activities when that individual poses a direct threat to the health or safety of others.

Evaluation and Compliance

~~The Board directs the Superintendent to evaluate district programs and practices on nondiscrimination, in accordance with law, and to report evaluations to the Board. The Board will submit such assurances of compliance as are required by law.~~



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Notice Annual Publication

Policy and Regulation 1510 will be available to any member of the public in the district's Policy and Regulation Manual. This Policy will be published yearly prior to the beginning of the school year in a regional newspaper, magazine and/or other written communication that is available to the public.

~~29 U.S.C. 794 (Sec. 504, Rehabilitation Act of 1973)~~

~~20 U.S.C. 1401 et seq. (Individuals with Disabilities Education Act)~~

~~42 U.S.C. 12101 (Americans with Disabilities Act of 1990, as amended)~~

~~N.J.S.A. 10:5-1 et seq.~~

~~N.J.S.A. 18A:18A-17~~

~~N.J.A.C. 6A:14-1 et seq.~~

~~34 CFR Part 104~~

Adopted:



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[See POLICY ALERT Nos. 136, 138, 151, 167 and 210]

R 1510 **AMERICANS WITH DISABILITIES ACT RIGHTS OF PERSONS
WITH HANDICAPS OR DISABILITIES/NON DISCRIMINATION**

The Board of Education will comply with the requirements of the Americans with Disabilities Act of 1990, including changes made by the ADA Amendments Act of 2008 (hereafter referred to as the "Act.")

A. Definitions

1. "Act" means the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008.
2. "Auxiliary aids and services" are identified based on the context of the communication and the individual's disability.
28 CFR §35.104

They include, but are not limited to:

- a. Effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
 - b. Effective methods of making visually delivered materials available to individuals who are blind or have low vision;
 - c. Acquisition or modification of equipment or devices or similar services and actions; and
 - d. Other similar services and actions.
3. "Board" means the Board of Education of this school district.
 4. "Companion" means a family member, friend, or associate of an individual seeking access to a service, program, or activity of a school district, who, along with such individual, is an appropriate person with whom the district should communicate.



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5. "Complete complaint" means a written statement, signed by the complainant or someone authorized to do so on his/her behalf, containing the complainant's name and address and describing the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation. 28 CFR §35.104
6. "Current illegal use of drugs" means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.
7. "Direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services. 28 CFR §35.139
8. "Disability" means, with respect to an individual, that the individual meets one or more of the following three prongs:
 - a. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
 - b. A record of such an impairment; or
 - c. Being regarded as having such an impairment.
9. "District" means this school district.
10. "District Coordinator" means the district official responsible for the coordination of activities relating to compliance with the Act.
11. "Drug" means a controlled substance, as defined in schedules I through V of Section 202 of the Controlled Substances Act. 21 U.S.C. §812
12. "Employee" means an individual employed by the Board.
13. "Essential functions of the employment position" are based upon the employer's judgment and can include an employer's written description, prepared before advertising or interviewing applicants for the job.



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14. "Existing facility" means a facility in existence on any given date, newly constructed or altered.
15. "Facility" means all or any portion of buildings, property, or structures, including the site where the building, property, structure, or equipment is located.
16. "Illegal use of drugs" means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act. 21 U.S.C. §812
17. "Individual with a disability" means a person who has a disability and does not include an individual currently engaging in the illegal use of drugs, when the district acts on the basis of such use.
18. "Major life activities" means those of central importance to daily life and include, but are not limited to, functions such as: caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sitting, reaching, writing, standing, reaching, lifting, sleeping, bending, speaking, breathing, reading, concentrating, thinking, communicating, interacting with others, learning, and working. "Major life activities" also includes physical or mental impairments that substantially limit the operation of a major bodily function, including, but not limited to: functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, reproductive systems, and the operation of an individual organ within a body system. 28 CFR §35.108; 28 CFR §36.105
19. "Mitigating measures" means steps taken to eliminate or reduce the symptoms or impact of an impairment. "Mitigating measures" include, but are not limited to: medication; medical equipment/appliances; mobility devices; low vision devices (not including ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids, cochlear implants, or other implantable hearing devices; oxygen therapy equipment and



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supplies; the use of assistive technology; reasonable modifications or auxiliary aids or services; learned behavioral or adaptive neurological modifications; and psychotherapy, behavioral, or physical therapies. 42 U.S.C. 126 §12102

- a. Mitigating measures, must not be used when determining whether an impairment is a disability except for the use of corrective eyeglasses or contact lenses. Mitigating measures may be considered in assessing whether someone is entitled to reasonable accommodation or poses a direct threat.
20. "Office for Civil Rights" (OCR) means the United States Department of Education Office for Civil Rights.
21. "Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines used by individuals with mobility disabilities for the purpose of locomotion, including any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair. 28 CFR §35.104
22. "Physical or mental impairment" means any physiological disorder or condition such as, cosmetic disfigurement or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 28 CFR §35.108(b)(2) and 28 CFR§36.105(b)4



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- a. Physical or mental impairments may include, but are not limited to: contagious and noncontagious diseases and conditions; orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, dyslexia and other specific learning disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Human Immunodeficiency Virus (HIV) (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
 - b. Physical or mental impairments do not include: transvestism; transsexualism; homosexuality or bisexuality; gender identity disorders; sexual behavior disorders; pedophilia; exhibitionism; environmental, cultural, and economic disadvantages; pregnancy; physical characteristics; personality traits or behaviors; normal deviations in height, weight, or strength; compulsive gambling; kleptomania; pyromania; and psychoactive substance use disorders resulting from current illegal use of drugs.
 - c. An impairment that is episodic or in remission may be considered a "disability" if it would substantially limit a major life activity when active.
 - d. Not all impairments are disabilities.
23. "Public entity" means this Board of Education.
24. "Qualified individual" for the purposes of employment, means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position (based upon the employer's judgment) that such individual holds or desires. An employer's written description, prepared before advertising or interviewing applicants for the job, shall be considered evidence of the essential functions of the job. 42 U.S.C. 126 §12111(8)



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25. "Reasonable accommodation" may include making existing facilities used by employees readily assessable to and usable by individuals with disabilities and job restructuring, part-time modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.
26. "Record of such an impairment" means the individual has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
27. "Regarded as having an impairment" means the individual establishes that he or she has been subjected to a prohibited action under the Act because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits or is perceived to substantially limit a major life activity.
 - a. For this prong only, the public entity must demonstrate the impairment is or would be both transitory (lasting or expected to last six months or less) and minor to show an individual is not regarded as having such an impairment. 42 U.S.C. 126 §12102(3)(B)
 - b. A public entity is not required to provide a reasonable modification to an individual meeting the definition of "disability" solely under the "regarded as" prong.
28. "Substantially limits" means the extent to which the impairment limits an individual's ability to perform a major life activity as compared to most people in the general population, whether or not an individual chooses to forgo mitigating measures. 42 U.S.C. 126 §12102(4); 28 CFR §35.108(d); 28 CFR §35.105(d) The rules of construction when determining whether an impairment substantially limits performance of a major life activity include:



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- a. That it is broadly construed in favor of expansive coverage, to the maximum extent permitted under the Act.
- b. That it does not demand extensive analysis.
- c. That it substantially limits one major life activity, but not necessarily other major life activities.
- d. That it may be episodic or in remission, as long as the impairment would substantially limit a major life activity when active.
- e. That it need not prevent, or significantly or severely restrict, an individual from performing a major life activity.
- f. That it requires an individualized assessment which does not create an “inappropriately high level of limitation” and is based upon the conditions, manner, or duration under which the individual can perform the major life activity 42 U.S.C. 12102(4)(B).
- g. That it generally will not require scientific, medical, or statistical evidence (although such evidence can be required where appropriate evidence that can be considered may include statements or affidavits of affected individuals and school records).
- h. That the determination is made without regard to ameliorative effects of mitigating measures, except for the use of ordinary eyeglasses or contact lenses intended to fully correct visual acuity or eliminate refractive error. Non-ameliorative effects, such as the negative side effects of medication or a medical procedure, may also be considered.
- i. That the effects of an impairment lasting or expected to last less than six months can be substantially limiting for establishing a disability under the first two prongs: “actual disability” or “record of”.



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- 29. "Undue hardship" means an action requiring significant difficulty or expense when considered in light of factors which include: the nature and cost of the needed accommodation; the overall financial resources of the district or facility providing the reasonable accommodation; the size of the district with respect to the number of employees; effect on expenses and resources, or the impact otherwise of accommodation upon the operation of the facilities; and the type/location of facilities. 42 U.S.C. 126 §12111 (10)
- 30. "Wheelchair" means a manually operated or power-driven device designed primarily for use by an individual with a mobility disability.

B. General Requirements

1. Prohibitions Against Discrimination

- a. Discrimination is prohibited against a qualified individual on the basis of a disability. Such individual will not be excluded from participation in or denied the benefits of district services, programs, or activities or be subjected to discrimination by the district in accordance with 28 CFR §35.130. The district must ensure that:
 - (1) When services, programs, and activities are viewed in their entirety, they are accessible to and usable by individuals with disabilities; and
 - (2) Access to services, programs, and activities is provided in an integrated setting unless separate programs are necessary to ensure equal benefits.
- b. The district is not required to take any action that would result in a fundamental alteration of the nature of the program or activity or undue financial or administrative burden. However, claiming undue burden still requires the district to provide access through means that would not result in a fundamental alteration or undue financial or administrative burden.



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2. Direct Threat - 28 CFR §35.139
 - a. The district is not required to permit an individual to participate in or benefit from the district's services, programs, or activities when that individual poses a direct threat to the health or safety of others.
 - b. To determine whether an individual poses a direct threat to the health or safety of others, the district must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence to ascertain:
 - (1) The nature, duration, and severity of the risk;
 - (2) The probability that the potential injury will actually occur; and
 - (3) Whether reasonable modifications of policies, practices, or procedures or the provision of auxiliary aids or services will mitigate the risk.
3. Illegal Use of Drugs - 28 CFR §35.131
 - a. The district will not discriminate on the basis of past illegal use of drugs against an individual who is not engaging in current illegal use of drugs and who:
 - (1) Has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully;
 - (2) Is participating in a supervised rehabilitation program; or
 - (3) Is erroneously regarded as engaging in such use.



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- b. While the Act does not prohibit discrimination against an individual based on that individual's current illegal use of drugs, the district will not deny health services or services provided in connection with drug rehabilitation to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.
- c. The Act does not prohibit the district from adopting or administering reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual who formerly engaged in the illegal use of drugs is not now engaging in current illegal use of drugs.

C. Personal Devices and Services

- 1. The district will permit individuals with mobility disabilities to use wheelchairs and manually powered mobility aids such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities in any areas open to pedestrian use. 28 CFR §35.137
- 2. The district will make reasonable modifications to permit the use of other power-driven mobility devices by individuals with mobility disabilities unless the district can demonstrate that the power-driven device cannot be operated in accordance with legitimate safety requirements pursuant to 28 CFR §35.137. The district will not ask an individual using a wheelchair or other power-driven mobility device questions about the nature and extent of the individual's disability. The district may require the individual to provide credible assurance that the device is required because of the person's disability.
- 3. The district is not required to provide individuals with disabilities personal devices, such as wheelchairs; individually prescribed devices such as prescription eyeglasses or hearing aids; readers for personal use or study; or services of a personal nature including assistance in eating, toileting, or dressing pursuant to 28 CFR §35.135.



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D. Employment - 42 U.S.C. 126 §12112

1. Discrimination in Employment

- a. The Board will not discriminate against a qualified individual on the basis of disability in regard to job application procedures; hiring, advancement, or discharge; compensation; job training; and other terms, conditions, and privileges of employment.
- b. Applicants and employees working for or applying to work for the district who qualify for a job and are able to perform the essential functions of that job are entitled to reasonable accommodations provided that such accommodations do not pose undue hardship for the district.
- c. Nothing in the Act shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation as outlined in N.J.A.C. 6A:32-4.1 et seq.
- d. The school district may not, on the basis of disability:
 - (1) Limit, segregate, or classify a qualified individual in a way that adversely affects his/her opportunities or status of such employee, applicant, or participant in a contractual or other arrangement;
 - (2) Utilize standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability or perpetuate the discrimination of others subject to common administrative control;
 - (3) Exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to associate or have a relationship;



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- (4) Fail to make reasonable accommodations to known physical or mental limitations of an otherwise qualified individual with a disability or deny employment opportunities to such qualified individual unless the district can demonstrate that the accommodation would impose undue hardship to district operations;
 - (5) Use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out individuals with disabilities unless the standard, test, or other selection criteria, as used by the district, is shown to be job-related for the position in question and consistent with business necessity; and/or
 - (6) Select and administer tests concerning employment to otherwise qualified individuals who possess impaired sensory, manual, or speaking skills, unless done in an effective manner to ensure that, when such tests are administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or other factors such tests purport to measure rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant (except where such skills are the factors that the test purports to measure).
2. Medical Examinations and Inquiries - (42 U.S.C. 126 §12112)
- a. Pre-employment
 - (1) Prohibited examination or inquiries:
 - (a) Whether such an applicant is an individual with a disability; or
 - (b) The nature or severity of such disability.



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(2) Acceptable inquiry:

(a) The ability of an applicant to perform job-related functions.

b. Employment Entrance Examinations

(1) The district may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if:

(a) All entering employees are subject to such an examination regardless of disability;

(b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:

i. Supervisors and managers may be informed regarding necessary restrictions on work or duties of the employees and necessary accommodations;

ii. First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

iii. Government officials investigating compliance with this Act, will be provided relevant information on request.

(2) The results of such examination shall only be used in accordance with these provisions.



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c. Examination and Inquiry:

(1) Prohibited examinations and inquiries:

- (a) The district will not require a medical examination and will not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(2) Acceptable examinations and inquiries:

- (a) The district may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees in the district.
- (b) The district may make inquiries into the ability of an employee to perform job-related functions.

3. Defenses - 42 U.S.C. 126 §12113

a. Qualification Standards

- (1) It may be a defense to a charge of discrimination under the Act that an alleged application of qualification standards, tests, or selection criteria that screen out, tend to screen out, or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under the Act.



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- (a) The term "qualification standards" may include a requirement that an individual will not pose a direct threat to the health or safety of other individuals in the workplace.
 - (b) Notwithstanding 42 U.S.C. 126 §12102 (4)(E)(ii), the Board will not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.
- b. Infectious and Communicable Diseases
 - (1) In any case in which an individual has an infectious or communicable disease included on the list developed by the United States Secretary of Health and Human Services in accordance with the Act, and which cannot be eliminated by reasonable accommodation, and that is transmitted to others through the handling of food, the Board and its administration may refuse to assign or allow such individual to continue to work in a job involving food handling.
- c. Illegal Use of Drugs and Alcohol - 42 U.S.C. 126 §12114
 - (1) An individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, with exceptions noted in section B.3. of this Regulation.



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- (2) The Board will hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior as other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee.

d. Drug Testing

- (1) For the purposes of the Act, a test to determine the illegal use of drugs will not be considered a medical examination.
- (2) No provision of the Act shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

E. Program Accessibility

1. Discrimination Prohibited

- a. Except as otherwise provided in 28 CFR §35.150, no qualified individual with a disability will, because the district's facilities are inaccessible to or unusable by individuals with disabilities, including inside or outside access to such facilities, may be excluded from participation in, or be denied the benefits of the services, programs, or activities of the district, or be subjected to discrimination by the district.
- b. The district will maintain facilities and equipment required by the Act to be readily accessible to and usable by individuals with disabilities. This provision does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs. 28 CFR §35.133



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- (1) In regard to existing facilities, the district will operate each service, program, or activity so that the service, program, or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities.
 - (a) The district is not required to fundamentally alter the nature of a service, program, or activity, or assume undue financial or administrative burdens, or take any action threatening the historic significance of a historic property and has the burden of proving that compliance with the Act would result in such alterations or burdens. 28 CFR §35.150(a)
 - (b) Should the Board and Superintendent of Schools or his/her designee determine, after considering all resources available, that compliance would result in such alteration or burden, a written statement of reasons must accompany such a determination.
 - (c) The Board will take any other action, including, but not limited to redesign or acquisition of equipment, or reassignment of services or staff, that would not result in such alteration or burden, but would, nevertheless, ensure that individuals with disabilities receive the benefits/services provided by the district.
- (2) In regard to new construction and alterations, each facility or part of a facility constructed by, on behalf of, or for the use of the district will be designed and constructed in such manner, in accordance with 28 CFR §35.151, that the facility or part of the facility is readily accessible to and usable by individuals with disabilities.



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- (a) Full compliance with the requirements of 28 CFR §35.151 is not required where the district can demonstrate that it is structurally impracticable to meet the requirements.
- (b) If providing accessibility in conformance with 28 CFR §35.151 to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities, (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with 28 CFR §35.151.

F. Communications - 28 CFR §35.160

- 1. The district will take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others.
- 2. The district will furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the district.
 - a. Auxiliary aids and services will be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.
 - b. The district will not require an individual with a disability to bring another individual to interpret with a disability. The district will not rely on an adult accompanying an individual with a disability or on a minor child to interpret



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or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or where the individual with a disability specifically requests that the accompanying adult interprets or facilitates communication, the accompanying adult agrees to provide such assistance, and reliance on that adult is appropriate under the circumstances.

3. Where the district communicates by telephone with applicants and beneficiaries who are deaf, hard of hearing, or who have speech impairments, text telephones (TTYs) or equally effective telecommunications systems equipped with emergency service access will be used to communicate, in the same time and manner as with other telephone systems (including automated systems).
28 CFR §35.161
4. The district will ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities, including signage at all inaccessible facility entrances.
28 CFR §35.163

G. Grievance Procedure - 28 CFR §35.107(b)

1. A complainant who believes that he/she has been harmed or adversely affected by a discriminatory practice or act prohibited by law and/or policy shall first discuss the matter with his/her immediate supervisor in an attempt to resolve the matter informally.
2. If the matter is not resolved to the satisfaction of the complainant within thirty working days, the complainant may submit a written complaint to the District Coordinator. The complaint will include:
 - a. The complainant's name and address;
 - b. The specific act or practice of which the complainant complains;



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- c. The employee, if any, responsible for the allegedly discriminatory act;
 - d. Results of discussions conducted in accordance with paragraph G.1. above; and
 - e. Reasons why those results are not satisfactory.
3. The District Coordinator will investigate the matter informally and will respond to the complainant in writing no later than seven working days after receipt of the written complaint. A copy of the complaint and the response will be forwarded to the Superintendent.
4. The response of the District Coordinator may be appealed to the Superintendent in writing within three working days after it has been received by the complainant. The appeal will include the original complaint, the response to the complaint, and the complainant's reason for rejecting the response. A copy of the appeal must be given to the staff member alleged to have acted discriminatorily.
5. On his/her timely request (that is, submitted before the expiration of the time within which the Superintendent must render a decision), the complainant will be given an informal hearing before the Superintendent, at a time and place convenient to the parties, but no later than seven working days after the request for a hearing has been submitted. The Superintendent may also require at the hearing the presence of the staff member charged with a discriminatory act and any other person with knowledge of the complained act.
6. The Superintendent will render a written decision in the matter no later than seven working days after the appeal was filed or the hearing was held, whichever occurred later. Copies of the decision will be given to all parties.



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7. The complainant may appeal the Superintendent's decision to the Board by filing a written appeal with the School Business Administrator/Board Secretary no later than three working days after receipt of the Superintendent's decision. The appeal shall include:
 - a. The original complaint;
 - b. The response to the complaint;
 - c. The Superintendent's decision;
 - d. A transcript of the hearing, if one has been made, or a summary of the hearing to which all parties have consented; and
 - e. The complainant's reason for believing the Superintendent's decision should be changed.
8. If a staff member is charged with a discriminatory act, the Board will provide a copy of the appeal to that staff member.
9. The Board will review all papers submitted and may render a decision on the basis of the proceedings below. If the complainant so requests, the Board may convene a hearing, at which all parties may be represented by counsel and may present and examine witnesses, who will testify under oath.
10. The Board will render a written decision no later than forty-five calendar days after the appeal was filed or the hearing held, whichever occurred later. Copies of the decision will be given to all parties.
11. The complainant will be informed of his/her right to appeal the Board's decision to the:

U.S. Department of Justice
950 Pennsylvania Avenue, NW
Civil Rights Division
Disability Rights Section – 1425 NYAV
Washington, D.C. 20530



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12. An individual who believes he or she or a specific class of individuals has been subjected to discrimination on the basis of disability by the district may, by himself/herself, or an authorized representative, at any time, file a complaint directly with OCR.
13. Record:
 - a. The record of any complaint processed in accordance with this procedure will be maintained in a file kept by the District Coordinator.
 - b. A copy of the decision rendered at the highest level of appeal will be kept in the employee's personnel file.

Adopted:



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Section 504 of the Rehabilitation Act of 1973 - Students
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[See **POLICY ALERT No. 210**]

2418 SECTION 504 OF THE REHABILITATION ACT OF 1973 - STUDENTS

The Board will comply with Section 504 of the Rehabilitation Act of 1973, the purpose of which is to eliminate discrimination on the basis of disability in any program or activity receiving Federal financial assistance.

Guarantee of Rights

The Board will provide a free appropriate public education to each student with a disability regardless of the nature or severity of the disability.

The Board will make reasonable accommodations to ensure that no student with a disability, solely on the basis of the disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity sponsored by this Board, including participation in non-academic and extracurricular services and activities.

The administration will undertake to identify and locate all students with disabilities between the ages of three and twenty-two, who are residing within the district, but not receiving a public school education. The administration will take steps to notify such students and their parents of the district's duty to provide accommodations for students with disabilities as well as procedures to determine eligibility for such accommodations.

Educational Setting

The Board will ensure that a student with a disability participates with nondisabled students in activities and services to the maximum extent appropriate to the needs of the student with a disability.

The school administration will place a student with a disability in the regular educational environment within the district unless the district demonstrates that the education of the student with a disability in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.



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Section 504 of the Rehabilitation Act of 1973 - Students

Evaluation and Placement

The Board will establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need accommodations, special education, and/or related services because of a disability. Evaluations may include, but are not limited to, a review of work samples, direct observation, interviews, and/or administration of assessment measures.

Enforcement

The Supervisor of Pupil Services is designated by the Board as the District 504 Coordinator for matters dealing with Section 504 of the Rehabilitation Act of 1973 and can be contacted at the following address or telephone number:

Office Address: 52 Readington Road, P.O. Box 807
Whitehouse Station, NJ 08889

Telephone: 908-534-2195

Procedural Safeguards

The district will establish and implement a system of procedural safeguards with respect to the identification, evaluation, or provision of services under Section 504. This system includes notice, an opportunity for the parent to examine relevant records, an impartial hearing with the opportunity for participation by the parent and representation by counsel, and a review procedure. These procedural safeguards shall be in accordance with N.J.A.C. 6A:14 et seq., Policy 2460, Regulation 2460.8, and/or the grievance procedures outlined in Regulation 2418.

Notice

The Board will notify members of the community that the Board does not discriminate on the basis of a disability in violation of Section 504 of the Rehabilitation Act of 1973. Policy and Regulation 2418 may be reprinted in part or in full and distributed to serve as adequate notice.



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Section 504 of the Rehabilitation Act of 1973 - Students

State or Local Law

The obligation to comply with the Rehabilitation Act of 1973 is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of disability, imposes prohibitions or limits upon the eligibility of a student with a disability to receive services.

29 U.S.C. 794 (Section 504 Rehabilitation Act of 1973)

20 U.S.C. 1401 et seq. (Individuals with Disabilities Education Act)

42 U.S.C. 12101 (Americans with Disabilities Act of 1990, as amended)

Adopted:



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Section 504 of the Rehabilitation Act of 1973 - Students

Dec 16

M

[See POLICY ALERT No. 210]

R 2418 SECTION 504 OF THE REHABILITATION ACT OF 1973 - STUDENTS

It is the policy of the Board of Education that no qualified student with a disability will, solely on the basis of disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity sponsored by this Board. The Board will also comply with the Individuals with Disabilities Education Act through the implementation of Policy 2460 and Regulations 2460 through 2460.16.

A. Definitions

1. "Accommodation" means a change in the educational setting, instructional strategies, materials, and/or supplementary/related aids and services that does not significantly alter the content of the curriculum or level of expectation for a student's performance, but which allows the student to access the regular general education curriculum.
2. "Act" means the Rehabilitation Act of 1973.
3. "Aids and Services" means aids and services designed to meet the individual student's educational needs to the same extent as the needs of students without disabilities are met. 34 CFR §104.33
4. "Board" means the Board of Education of this school district.
5. "Complainant" means a parent of a student with a disability who files a grievance in accordance with the grievance procedure.
6. "Day" means either calendar or working day, as specified in the Act.
7. "Disability" means, with respect to an individual, that the individual meets one or more of the following three prongs:
 - a. A physical or mental impairment that substantially limits one or more of the major life activities of such individual;



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Section 504 of the Rehabilitation Act of 1973 - Students

- b. A record of such an impairment; or
- c. Being regarded as having such an impairment.
- 8. "District" means this school district.
- 9. "District 504 Coordinator" means the district official responsible for the coordination of activities relating to compliance with the Act.
- 10. "FAPE" means free appropriate public education. FAPE consists of the provision of regular or special education and related aids and services designed to meet the educational needs of a student with a disability to the same extent as the needs of non-disabled students are met.
- 11. "Grievance" means an unresolved problem concerning the interpretation or application of law and regulations regarding discrimination by reason of a disability by an officer or employee of this district.
- 12. "Individuals with Disabilities in Education Act" (IDEA) identifies eligible children and young adults who have specific types of disabilities and, thus, require special education and related services. If they qualify, students receiving services through IDEA may also be eligible for services under Section 504 and ADA.
- 13. "Major life activities" means those of central importance to daily life and include, but are not limited to, functions such as: caring for one's self, performing manual tasks, walking, seeing, hearing, eating, sitting, writing, standing, reaching, lifting, sleeping, bending, speaking, breathing, reading, concentrating, thinking, communicating, interacting with others, learning, and working. "Major life activities" also include physical or mental impairments that substantially limit the operation of a major bodily function, including, but not limited to: functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, reproductive systems, and the operation of an individual organ within a body system.
28 CFR §35.108; 28 CFR §36.105



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14. "Mitigating measures" means steps taken to eliminate or reduce the symptoms or impact of an impairment. "Mitigating measures" include, but are not limited to: medication; medical equipment/appliances; mobility devices; low vision devices (not including ordinary eyeglasses or contact lenses); prosthetics (including limbs and devices); hearing aids, cochlear implants, or other implantable hearing devices; oxygen therapy equipment and supplies; the use of assistive technology; reasonable modifications or auxiliary aids or services; learned behavioral or adaptive neurological modifications; and psychotherapy, behavioral, or physical therapies. 42 U.S.C. 126 §12102
 - a. Mitigating measures, must not be used when determining whether an impairment is a disability except for the use of corrective eyeglasses or contact lenses. Mitigating measures may be considered in assessing whether someone is entitled to reasonable accommodation or poses a direct threat.
15. "Physical or mental impairment" means any physiological disorder or condition such as, cosmetic disfigurement or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic and lymphatic, skin, and endocrine; or any mental or psychological disorder such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. 28 CFR §35.108(b)(2) and 28 CFR §36.105(b)4
 - a. Physical or mental impairments may include, but are not limited to: contagious and noncontagious diseases and conditions; orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; intellectual disability; emotional illness; dyslexia and other specific learning disabilities; Attention Deficit Hyperactivity Disorder (ADHD); Human Immunodeficiency Virus (HIV) (whether symptomatic or asymptomatic); tuberculosis; drug addiction; and alcoholism.



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Section 504 of the Rehabilitation Act of 1973 - Students

- b. Physical or mental impairments do not include: transvestism; transsexualism; homosexuality or bisexuality; gender identity disorders; sexual behavior disorders; pedophilia; exhibitionism; environmental, cultural, and economic disadvantages; pregnancy; physical characteristics; personality traits or behaviors; normal deviations in height, weight, or strength; compulsive gambling; kleptomania; pyromania; and psychoactive substance use disorders resulting from current illegal use of drugs.
 - c. An impairment that is episodic or in remission may be considered a "disability" if it would substantially limit a major life activity when active.
 - d. Not all impairments are disabilities.
16. "Qualified student with a disability" means a student with a disability at the preschool, elementary, or secondary level, who is: (1) of an age at which students without disabilities are provided educational services; (2) of an age at which it is mandatory under State law to provide educational services to students with disabilities; or (3) a student to whom a State is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).
17. "Record of such an impairment" means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
18. "Regarded as having an impairment" means the individual establishes that he or she has been subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits or is perceived to substantially limit a major life activity.
- a. For this prong only, the public entity must demonstrate the impairment is or would be both transitory (lasting or expected to last six months or less) and minor to show an individual is not regarded as having such an impairment.
42 U.S.C. 126 §12102(3)(B)



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Section 504 of the Rehabilitation Act of 1973 - Students

- b. A public entity is not required to provide a reasonable modification to an individual meeting the definition of “disability” solely under the “regarded as” prong.
- 19. “Section 504” means Section 504 of the Act.
- 20. “Student” means an individual enrolled in any formal educational program provided by the school district.
- 21. “Substantially limits” means the extent to which the impairment limits a student’s ability to perform a major life activity as compared to most people in the general population, whether or not an individual chooses to forgo mitigating measures. 42 U.S.C. 126 §12102 (4); 28 CFR §35.108(d); 28 CFR §35.105(d) The rules of construction when determining whether an impairment substantially limits a student in a major life activity include:
 - a. That it is broadly construed in favor of expansive coverage, to the maximum extent permitted under the Act.
 - b. That it does not demand extensive analysis.
 - c. That it substantially limits one major life activity, but not necessarily other major life activities.
 - d. That it may be episodic or in remission, as long as the disability would substantially limit a major life activity when active.
 - e. That it need not prevent, or significantly or severely restrict, an individual from performing a major life activity.
 - f. That it requires an individualized assessment which does not create an “inappropriately high level of limitation” and is based upon the conditions, manner, or duration under which the individual can perform the major life activity 42 U.S.C. 12102(4)(B).



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Section 504 of the Rehabilitation Act of 1973 - Students

- g. That it generally will not require scientific, medical, or statistical evidence (although such evidence can be required where appropriate - evidence that can be considered may include statements or affidavits of affected individuals and school records).
- h. That the determination is made without regard to ameliorative effects of mitigating measures, except for the use of ordinary eyeglasses or contact lenses intended to fully correct visual acuity or eliminate refractive error. Non-ameliorative effects, such as the negative side effects of medication or a medical procedure, may also be considered.
- i. That the effects of an impairment lasting or expected to last less than six months can be substantially limiting for establishing a disability under the first two prongs: "actual disability" or "record of".

B. District 504 Coordinator - 34 C.F.R. §104.7(a)

- 1. The District 504 Coordinator will be responsible for the initial evaluation of all allegations, reasonable accommodations (if required), and re-evaluations.
- 2. The District 504 Coordinator will comply with the mediation and due process requirements pursuant to N.J.A.C. 6A:14-2.6 and 6A:14-2.7 where applicable in cases arising from Section 504.

C. Educational Program

- 1. General:
 - a. The Board will not, on the basis of a disability, exclude a student with a disability from a program or activity and will take into account the needs of such student in determining the aid, benefits, or services to be provided under a program or activity.



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- b. Identification for special education services under IDEA and accommodations under Section 504 are not mutually exclusive.
 - c. Students not otherwise eligible for special education programs and/or related services pursuant to N.J.A.C. 6A:14-1 et seq. may be referred to the District 504 Coordinator by the parent or staff member.
 - d. The Board will provide reasonable accommodation(s) to students with disabilities notwithstanding any program and/or related services required pursuant to N.J.A.C. 6A:14-1 et seq.
- D. Free Appropriate Public Education (FAPE) - 34 CFR §104.33
- 1. FAPE must be provided without cost to the student's parent, except for those fees imposed on a parent of a non-disabled student.
 - 2. The district may place a student with a disability in or refer such student to a program other than one it operates as its means of carrying out the provisions of this Regulation.
 - a. The district will continue to maintain responsibility for ensuring the requirements of the Act are met in respect to any student with a disability so placed or referred.
 - b. The district will ensure adequate transportation to and from the program, provided at no greater cost than would be incurred by the parent if the student were placed in a program operated by the district.
 - (1) The administration will consider the proximity of any alternative setting to the student's home.
 - (2) If a public or private residential placement is necessary to provide FAPE to a student with a disability, the placement, including non-medical care, room, and board, shall be provided at no cost to his/her parent.



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E. Evaluation and Placement - 34 CFR §104.35

1. The Board will establish standards and procedures for initial evaluations and periodic re-evaluations of students who need or are believed to need special education and/or related services on the basis of disability.
 - a. Section 504 evaluations may encompass record and work sample review; direct observation in the natural setting; interviews with the student, parent, and school personnel; and/or administration of assessment measures. They do not include independent evaluations.
 - b. It may be determined that additional data is required, including the administration of formal standardized instruments and data on conditions in remission or episodic in nature. Tests and other evaluation materials must meet the following criteria:
 - (1) Validated for the specific purpose for which they are used and administered by trained personnel;
 - (2) Tailored to assess specific areas of educational need and not merely those designed to provide a single intelligence quotient; and
 - (3) Accurately reflect aptitude or achievement or whatever else the tests purport to measure, rather than the student's impaired sensory, manual, or speaking skills (unless the test is designed to measure these particular factors).
2. In interpreting evaluation data and in making placement decisions, the district will:
 - a. Draw information from a variety of sources, including, but not limited to: aptitude and achievement tests, medical evaluations, teacher recommendations, physical condition, social and cultural background, and adaptive behavior;



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- b. Establish procedures to ensure that information obtained from all such sources is documented and carefully considered;
 - c. Ensure that placement decisions are made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data, and placement options; and
 - d. Ensure that placement decisions are made in conformity with this Regulation and 34 CFR §104.34.
3. The District 504 Coordinator will establish timelines for re-evaluations of students receiving reasonable accommodation(s). A parent may request a re-evaluation at any time upon written request to the District 504 Coordinator.
 4. Copies of requests for evaluation and related documents will be maintained in a designated Section 504 file folder placed in the student's cumulative record.

F. Section 504 and Special Education

1. A student who qualifies for Section 504 services may not qualify for special education under IDEA; likewise, a student who qualifies under IDEA may not qualify under Section 504.
2. A referral for a Section 504 evaluation may be made concurrently with a pending special education evaluation. In such instances, the Section 504 evaluation should be conducted during the same timeline utilized for the special education assessment. Generally, the Section 504 evaluation should be conducted in less than sixty days.
3. If a student is found eligible under Section 504 prior to the special education team's findings, a Section 504 Accommodation Plan will be developed pending the special education team's findings. If the student is then found eligible for special education, an Individualized Education Program (IEP) will be developed and the IEP team can incorporate into the IEP any accommodations/services provided in the Section 504 Accommodation Plan.



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Section 504 of the Rehabilitation Act of 1973 - Students

4. A separate Section 504 team meeting will be convened when a student is identified as eligible for special education and no longer requires accommodations/services under Section 504.
5. When an IEP team determines a student is not eligible or no longer eligible for special education, there may be circumstances when a Section 504 referral for evaluation may be appropriate and should be considered. The IEP team may document the student is being referred for a Section 504 evaluation, and the eligibility evaluation shall be addressed in a separate Section 504 team meeting.

G. Section 504 Accommodation Plan

1. The District 504 Coordinator will assist in organizing a team of individuals responsible for receiving referral documents; securing evaluation information; and determining eligibility and appropriate accommodations, related aids or services for eligible students with disabilities. The team must be comprised of people who:
 - a. Are knowledgeable about the student;
 - b. Understand the meaning of evaluation data; and
 - c. Are familiar with placement options.
2. The District 504 Coordinator, based on the evaluation of the student eligible for services under Section 504, will prepare a Section 504 Accommodation Plan which may include as relates to the student:
 - a. Name;
 - b. Date of birth;
 - c. Current educational placement;
 - d. Name of the District 504 Coordinator preparing the Section 504 Accommodation Plan;
 - e. Disabling condition:



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- (1) Major life activity impaired;
 - (2) Educational impact; and
 - (3) Impact on related educational progress.
- f. Accommodation (as appropriate):
 - (1) Physical and learning environment;
 - (2) Instructional;
 - (3) Behavioral;
 - (4) Evaluation;
 - (5) Medical; and/or
 - (6) Transportation.
- g. Other:
 - (1) List of individuals participating in the development of the plan, along with their titles and the date(s) of their participation.
 - (2) Certification by the student's parent that he or she has participated in the development of the plan and provided consent to its implementation.
 - (3) A waiver of the fifteen days' notice prior to the implementation of the plan by the parent if the plan is to be implemented sooner than the fifteen days.
3. A Section 504 Accommodation Plan should not:
 - a. Modify the curriculum;
 - b. Exempt a student from a course or subject required for graduation;



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- c. Alter the level of expectation for a student's performance;
 - d. Provide an extended time accommodation only for standardized testing when it is not required as part of the regular program of evaluation;
 - e. Include any testing accommodations unless authorized by the testing agency; and
 - f. Assign responsibility for implementing Section 504 accommodations to another student.
4. A Section 504 Accommodation Plan should:
- a. Directly relate to a student's identified needs;
 - b. Be specific, measurable, and tailored to meet students' identified needs to allow for consistent implementation;
 - c. Be written to incorporate specific symptoms, behavior, or triggers that elicit implementation of the accommodation or service if required only occasionally; and
 - d. Clearly state how much extended time is required based upon a student's identified needs, if the Section 504 team determines such an accommodation is appropriate.
5. Students needing medication:
- a. Not all students needing medication administered by school staff will require a Section 504 Accommodation Plan. It is not necessary to qualify a student as having a disability that substantially limits a major life activity under Section 504 in order to provide a service that schools perform for all general education students.
 - b. A Section 504 referral with the potential for a subsequent Section 504 Accommodation Plan is appropriate when a student is found to have a disability that substantially limits a major life activity and needs medication administered on a systematic basis to receive equal access to the educational program.



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Section 504 of the Rehabilitation Act of 1973 - Students

H. Nonacademic/Extracurricular Services - 34 CFR §104.37

1. Nonacademic and Extracurricular Services may include counseling, physical recreational athletics, transportation, health services, recreational activities, special interest groups or school clubs, and/or referrals to agencies which provide assistance to students with disabilities and student employment.
2. The Board and administration will ensure that students with disabilities are not counseled toward more restrictive career objectives than are nondisabled students with similar interests and abilities.
3. The Board will provide to students with disabilities equal opportunity as afforded nondisabled students for participation in physical education courses, athletics, and similar programs and activities.
 - a. The district may offer students with disabilities physical education and athletic activities that are separate or different from those offered to nondisabled students only if the separation or differentiation is consistent with the requirements of 34 CFR §104.34 and only if no student with a disability is denied the opportunity to compete or to participate.

I. Grievance Procedure - 34 CFR §104.7(b)

1. This grievance procedure shall apply to a student with a disability alleging discrimination under the provisions of Section 504 of the Rehabilitation Act of 1973.
2. The parent who believes his or her child has a valid basis for a grievance under Section 504 shall file an informal complaint in writing with the District 504 Coordinator stating the specific facts of the grievance and the alleged discriminatory act.



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Section 504 of the Rehabilitation Act of 1973 - Students

3. The District 504 Coordinator will make reasonable efforts to resolve the matter informally by reviewing the grievance with appropriate staff including, but not limited to: the Principal, Child Study Team staff, and/or classroom teacher(s).
4. The District 504 Coordinator will investigate and document the complaint including dates of meetings, dispositions, and date(s) of dispositions. The District 504 Coordinator will provide a written decision to the complainant within seven working days of the written complaint.
5. If the complainant is not satisfied with the District 504 Coordinator's written decision, the complainant may appeal the decision in writing, setting out the circumstances that give rise to the alleged grievance. This written appeal must be filed with the District 504 Coordinator within three working days of the complainant's receipt of the written decision. The written appeal must state the basis for the appeal and the remedy sought by the complainant.
6. The District 504 Coordinator will appoint a qualified hearing officer within seven working days of the receipt of the written appeal. The hearing officer will conduct a hearing within seven working days of receipt of the written appeal. The hearing officer will give the parent a full and fair opportunity to present evidence relevant to the issues raised under the initial grievance. The parent may, at his or her own expense, be assisted or represented by individuals of their choice, including legal counsel. The hearing officer will present a written decision to the District 504 Coordinator and aggrieved individual within seven working days of the hearing.
7. The complainant may file a written appeal to the Board if not satisfied with the hearing officer's decision provided the written appeal is submitted to the Superintendent within three working days of the complainant's receipt of the hearing officer's written decision. The Board may, but is not required to, conduct a Board hearing on the appeal.



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Section 504 of the Rehabilitation Act of 1973 - Students

8. The complainant may request mediation and due process in accordance with N.J.A.C. 6A:14-2.6 and 2.7 if unsatisfied with the written decision of the Board. If specifically requested by the parent, the aforementioned N.J.A.C. 6A:14-2.6 and 2.7 grievance procedures must be followed.

Adopted:



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Education of Homeless Children

Dec 16

[See POLICY ALERT Nos. 160 and 210]

5116 EDUCATION OF HOMELESS CHILDREN

The Board of Education will admit and enroll homeless children in accordance with **Federal and** State laws and New Jersey Administrative Code. The Board of Education adopts this **Ppolicy** to be in compliance with law and **administrative code** ~~Code~~ to ensure the enrollment of homeless children in school and to respond to appeals made by parents(s) or legal guardian(s) or other parties related to **the** ~~their~~ enrollment of homeless children.

The Board of Education ~~The district will~~ **shall** determine **that** a child is homeless when he or she resides in a publicly or privately operated shelter designed to provide temporary living accommodations, including: hotels or motels; congregate shelters, including domestic violence and runaway shelters; transitional housing; and homes for adolescent mothers. A child is also determined homeless when he or she resides in a public or private place not designated for or ordinarily used as a regular sleeping accommodation, including: cars or other vehicles **including** ~~excluding~~ mobile homes; tents or other temporary shelters; **parks; abandoned buildings; bus or train stations;** temporary shelters provided to migrant workers and their children on farm sites; and the residence of relatives or friends ~~with whom~~ **where** the homeless child **resides** ~~is temporarily residing~~ out of necessity because **his or her** ~~the~~ family lacks a regular or permanent residence of its own. **A child is also determined homeless when he or she resides in substandard housing or any temporary location wherein children and youth are awaiting foster care placement.**

The **school** district of residence for a homeless child is responsible for the education of the child and **shall** ~~will~~ assume all responsibilities as required in N.J.A.C. 6A:17-2.34 ~~et seq.~~ The **school** district of residence **for a homeless child means** is the **school** district in which the parent(s) or legal guardian(s) of a **homeless child resided** ~~last resided~~ prior to becoming homeless.

The **school** district liaison **designated by the Superintendent of Schools** for the education of homeless children is the Supervisor of Pupil Services. The liaison will facilitate communication and cooperation between the **school** district of residence and the **school** district where the homeless child **resides and shall assume all responsibilities as outlined in N.J.A.C. 6A:17-2.4(a).** ~~is temporarily residing and will develop procedures to ensure that a homeless child temporarily residing in the district is enrolled and attending school pursuant to N.J.A.C. 6A:17-2.6.~~



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When a homeless child **resides in a school district** ~~is living temporarily in the school district~~, the **school district liaison shall notify the liaison of the school district of residence within twenty-four hours of receiving notification from the parent, the Department of Human Services or the Department of Children and Families, a shelter director, an involved agency, or a case manager.** ~~upon receiving notification from the parent(s) or legal guardian(s), the Department of Human Services, a shelter director, an involved agency, or a case manager, will notify the liaison of the district of residence within twenty-four hours of the notification.~~ Upon notification of the need for enrollment of a homeless child, the liaison in the **school district of residence shall** ~~will~~ coordinate enrollment procedures immediately based upon the best interest of the child pursuant to N.J.A.C. 6A:17-2.56(b).

The Superintendent **of the school district of residence** or designee ~~of the district of residence~~ shall decide **in which school** the district ~~of enrollment~~ of the homeless child **shall be enrolled** in accordance with **the provisions of N.J.A.C. 6A:17-2.56 et seq.**

Unless parental rights have been terminated by a court of competent jurisdiction, the ~~parent(s) or legal guardian(s)~~ retains all rights under N.J.A.C. 6A:17-2.1 et seq.

When If 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 Superintendent(s) or the designee(s) of the involved district(s) or the **child's parent(s) or legal guardian(s)** ~~of the child must~~ **shall** immediately notify the **Executive County Superintendent of Schools, who, in consultation with the Department of Education's McKinney-Vento Homeless Education Coordinator or designee, shall immediately** ~~will~~ decide the **child's** status ~~of the child within two working days.~~ If a dispute remains between the parent(s) ~~or legal guardian(s) and/or~~ **and the involved the school district(s)** following the **Executive County Superintendent's** determination, the parent(s) ~~or legal guardian(s)~~ or the involved **district** Board(s) of Education may appeal to the Commissioner of Education for determination pursuant to N.J.A.C. 6A:3, **Controversies and Disputes** ~~et seq.~~



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Education of Homeless Children

When a school ~~If the district is designated as the school district of residence and disputes its such designation as the school district of residence, or where no designation can be agreed upon by the involved school districts, the Superintendent(s) or designee(s) of the involved school districts shall immediately notify the Executive County Superintendent of Schools, who shall immediately will make a determination, if possible, but no later than within forty-eight hours within two working days. The district may appeal the County Superintendent's determination to the Department of Education pursuant to N.J.A.C. 6A:23-5.2(d), (e), and (f).~~

If a the dispute occurs regarding the determination of the district of residence enrollment does not involve the determination of homelessness and/or district enrollment, the school district made by the district of residence, disputing the Executive County Superintendent's determination may appeal to the Department of Education pursuant to N.J.A.C. 6A:23A-19.2(d), (e), and (f) and request a determination from the Division of Administration and Finance. ~~of the district of residence shall immediately notify the County Superintendent of Schools. The County Superintendent will determine within two working days where the child shall be enrolled based on the child's best interest pursuant to N.J.A.C. 6A:17-2.6(b). If the County Superintendent's decision is disputed, the Department of Education shall provide for mediation in accordance with N.J.A.C. 6A:17-2.8(c)1. If an appeal of a determination of district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner of Education pursuant to N.J.A.C. 6A:3, Controversies and Disputes.~~

Any A dispute or appeal shall will not delay the homeless child's immediate enrollment or continued enrollment in the school district entrance into school. The homeless child shall will be enrolled in the school district in which enrollment or continued enrollment is sought by the parent, pending resolution of the dispute or appeal designated by the County Superintendent pending resolution of the dispute or appeal. Disputes and appeals involving the services provided to a homeless child with a disability educational disabilities shall will be made pursuant to N.J.A.C. 6A:14.



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Financial responsibility, including the payment of tuition for the homeless child, will be in accordance with N.J.A.C. 6A:17-2.89 et seq. The **school** district of residence shall list the child on its annual Application for State School Aid (ASSA) pursuant to N.J.S.A. 18A:7F-33 **until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d.** At that time, the school district of residence shall no longer list the student on its ASSA. ~~as long as the parent(s) or legal guardian(s) remains homeless and the child is enrolled in another school district. If a district of residence cannot be determined for a homeless child or if a district of residence is outside of the State, The State shall will assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12.1(d) and shall pay the tuition to the school district in which the child is currently enrolled until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. under the circumstances outlined in N.J.A.C. 6A:17-2.8(c). The State will pay the tuition, in accordance with N.J.A.C. 6A:17-2.9(c)1., to the school district in which the child is currently enrolled for as long as the child and his or her parent(s) or legal guardian(s) remain homeless.~~

N.J.S.A. 18A:7B-12; 18A:7B-12.1

N.J.A.C. 6A:17-2.1 et seq.

Adopted:



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Dec 16

[See POLICY ALERT Nos. 160 and 210]

R 5116 EDUCATION OF HOMELESS CHILDREN

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

1. **"School dDistrict liaison for the education of homeless children"** means the person identified in **the** each school district that facilitates all of the activities needed to ensure the enrollment **and attendance** of homeless children.
2. **"School dDistrict of residence" for a homeless child** means the school district in which the parent of a homeless child last resided prior to becoming homeless. **It may not be the school district in which the student currently resides. This is synonymous with the term "school district of origin" referenced in the McKinney-Vento Homeless Education Assistance Act. "School district of residence" for a student in a State facility means the school district in which the parent with whom the student lived prior to placement in a State facility currently resides pursuant to N.J.S.A. 18A:7B-12.b.**
3. **"Homeless child"** means a child or youth who lacks a fixed, regular, and adequate residence, pursuant to N.J.S.A. 18A:7B-12 and N.J.A.C. 6A:17-2.32.
4. **"Immediate" or "immediately" means at the instant the need for placement is made known.**
54. **"Parent"** means the natural or adoptive parent, legal guardian, foster parent, surrogate parent, **or and** person acting in the place of a parent such as the person with whom the child legally resides or a person legally responsible for the child's welfare.
65. **"Superintendent"** means Superintendent and/or Chief School Administrator.



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B. Determination of **Homelessness** Homeless Status (N.J.A.C. 6A:17-2.2)

1. **The Board of Education** ~~The district shall~~ will determine **that** a child is homeless **for the purposes of N.J.A.C. 6A:17-2** when he or she resides in any of the following:

- a. A publicly or privately operated shelter designed to provide temporary living accommodations, including: hotels or motels; congregate shelters, including domestic violence and runaway shelters; transitional housing; and homes for adolescent mothers;
- b. A public or private place not designated for or ordinarily used as a regular sleeping accommodation, including: cars or other vehicles **including** ~~excluding~~ mobile homes; tents or other temporary shelters; **parks; abandoned buildings; bus or train stations; or** temporary shelters provided to migrant workers and their children on farm sites;
- c. The residence of relatives or friends ~~where with whom~~ the homeless child **resides** ~~is temporarily residing~~ out of necessity because **his or her** ~~the~~ family lacks a regular or permanent residence of its own;
- d. **Substandard housing; or**
- e. **Any temporary location wherein children and youth are awaiting foster care placement.**

C. Responsibilities of the **School** District of Residence (N.J.A.C. 6A:17-2.3)

1. The **school** district of residence for a homeless child is responsible for the education of the child and **shall** ~~will~~:
 - a. Determine the **school** district in which the child shall be enrolled after consulting with the parent pursuant to N.J.A.C. 6A:17-2.56;
 - b. Pay the cost of tuition pursuant to ~~N.J.A.C. 6A:23-3.1~~ **N.J.S.A. 18A:38-19**, when the child attends school in another **school** district; and
 - c. Provide for transportation for the child pursuant to N.J.A.C. 6A:27-6.2.



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2. The determination of the homeless child's **school** district of residence ~~will~~ **shall** be made by the Superintendent **of the school district of residence** or designee ~~of the school district(s) involved~~ pursuant to N.J.A.C. 6A:17-2.45. ~~This determination will be based upon information received from the parent, the Department of Human Services~~ **or the Department of Children and Families**, a shelter provider, another school district, an involved agency, or a case manager.
 3. The district Board of Education identified **in accordance with N.J.S.A. 18A:7B-12** as the **school** district of residence ~~in accordance with N.J.S.A. 18A:7B-12~~ for a homeless child **shall be** is the **school** district of residence **until the parent establishes a permanent residence** ~~for as long as the parent remains homeless. Financial responsibility will remain with the homeless child's school district of residence until the family is deemed domiciled in another jurisdiction, pursuant to N.J.S.A. 18A:38-1.d.~~
- D. Designation of **School** District Liaisons and Their Responsibilities (N.J.A.C. 6A:17-2.4)
1. The Superintendent identifies the Supervisor of Pupil Services as the district liaison for the education of homeless children. The **school district liaison shall:** ~~will facilitate communication and cooperation between the district of residence and the district where the homeless child is temporarily residing. The district liaison will develop procedures to ensure a homeless child temporarily residing in the district is enrolled and attending school pursuant to N.J.A.C. 6A:17-2.6.~~
 - a. **Facilitate communication and cooperation between the school district of residence and the school district where the homeless child resides;**
 - b. **Develop procedures to ensure a homeless child residing in the school district is enrolled and attending school pursuant to N.J.A.C. 6A:17-2.5;**



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- c. **Ensure homeless families, children, and youth receive educational services for which they are eligible, including Head Start and Even Start programs, preschool programs administered by the local education agency, and referrals to health care, dental, mental health, and other appropriate services;**
- d. **Inform parents of homeless children and youth of the educational and related opportunities available to their children and ensure that they are provided with meaningful opportunities to participate in the education of their children;**
- e. **Ensure that public notice of the educational rights of homeless children and youth is disseminated where such children receive services, such as schools, family shelters, and soup kitchens;**
- f. **Ensure enrollment disputes are resolved pursuant to N.J.A.C. 6A:17-2.7;**
- g. **Ensure the parent of a homeless child or youth, or any unaccompanied youth, is fully informed of all transportation services, including transportation to the school district of residence, and is assisted in accessing transportation to the school selected under N.J.A.C. 6A:17-2.5;**
- h. **Assist the parent to obtain the homeless child or youth's medical records or required immunizations; and**
- i. **Assist an unaccompanied youth to ensure he or she is enrolled and is receiving all services pursuant to N.J.A.C. 6A:17.**



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2. When a homeless child ~~resides is living temporarily~~ in a school district, the district liaison **shall notify the liaison of the school district of residence within twenty-four hours**, ~~upon~~ of receiving notification from the parent, the Department of Human Services **or the Department of Children and Families**, a shelter director, an involved agency, or a case manager, ~~will notify the liaison of the district of residence within twenty-four hours of the notification.~~
3. Upon notification of the need for enrollment of a homeless child, the liaison in the **school** district of residence **shall** ~~will~~ coordinate enrollment procedures immediately based upon the best interest of the child pursuant to N.J.A.C. 6A:17-2.56(b).

E. **School District Enrollment (N.J.A.C. 6A:17-2.5)**

1. The Superintendent ~~or designee~~ of the **school** district of residence **or designee shall** ~~will~~ decide in which district the homeless child **shall** ~~will~~ be enrolled as follows:
 - a. **Enroll** ~~To continue~~ the homeless child's ~~education~~ in the school district of **residence to the extent feasible, except when doing so is contrary to the wishes of the homeless child's parent** ~~last attendance if the district of last attendance is not the district of residence;~~
 - b. **Continue the homeless child's education in the school district of last attendance if it is not the school district of residence** ~~To enroll the homeless child in the district of residence;~~ or
 - c. **Enroll the homeless child in the school district where the child resides** ~~To enroll the homeless child in the school district where the child is temporarily living.~~
2. The Superintendent of the **school** district of residence **or designee shall** ~~will~~ decide the **school** district of enrollment of a homeless child based on what is determined to be in the best interest of the child after considering:
 - a. **The enrollment of the homeless child in the school district of residence to the extent feasible, except when doing so is contrary to the wishes of the child's parent.**



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- ba. The continuity of the child's educational program;
 - b. ~~The preference of the parent as to where the child should attend school;~~
 - c. The eligibility of the child for special instructional programs, including but not limited to bilingual, gifted and talented, special education, early childhood, **and career and technical education** ~~vocational~~ programs; and
 - d. The distance, travel time, and safety factors in coordinating transportation services from the ~~temporary~~ residence to the school.
3. The Superintendent of the **school** district of residence **or designee shall** ~~will~~ determine the child's **school** district enrollment **immediately** ~~in a timely manner~~ after consultation with the parent ~~as follows:~~. **The school district of residence shall adhere to the following procedures:**
- a. Enrollment decisions **shall** ~~will~~ be made **immediately** ~~within three school days of~~ **upon** notification of the need for enrollment. When the decision is made, the child will be enrolled immediately. **If a dispute arises regarding enrollment of a homeless child, the homeless child shall be immediately enrolled in the school district in which enrollment is sought by the parent, pending resolution of the dispute pursuant to N.J.A.C. 6A:17-2.7. ~~and~~**
 - ba. Consultation with the parent regarding the enrollment decision and the right to appeal the decision **shall** ~~will~~ be documented in writing.
 - c. **A decision to enroll a homeless child in a school district other than the school district of residence or the school district requested by the parent shall be explained in writing and provided to the parent.**



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4. When a decision is made to enroll the child in a **school** district other than the **school** district of residence, the Superintendent **or designee** of the **school** district of residence **shall will** forward to the new **school** district all relevant school and health records **consistent with the provisions of N.J.A.C. 6A:32, School District Operations.** ~~When the parent is homeless due to conditions of domestic violence, the transfer of student records will be subject to the provisions of N.J.A.C. 6:3-6.~~
5. When a homeless child with **a disability** ~~educational disabilities~~ is enrolled in a **school** district other than the **school** district of residence, the **school district of enrollment shall treat the student as a transfer student pursuant to N.J.A.C. 6A:14, Special Education** ~~child will be placed in a program consistent with the goals and objectives of the child's individualized educational program. Within thirty days after placement, the district where the child is placed will review and revise the individualized educational program pursuant to N.J.A.C. 6A:14.~~
6. When the **school** district of residence for a homeless child cannot be determined, the Superintendent **or designee** of the **school** district in which the child **currently resides** ~~is temporarily residing will~~ **shall** enroll the child immediately in the **school** district of **the current** ~~temporary~~ residence or the **school** district of last attendance.
7. The school district selected pursuant to N.J.A.C. 6A:17-2 shall **immediately enroll the homeless child or youth, even if the child or youth is unable to produce records normally required for enrollment such as previous academic records, medical records, proof of residency, or other documentation.**
8. Enrollment in the school district of residence, the school district of last attendance if not the school district of residence, or the school district where the child resides shall continue for the duration of homelessness, including when a family becomes homeless between academic years, and also for the remainder of the academic year if the homeless child becomes permanently housed during the academic year.



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F. Parental Rights (N.J.A.C. 6A:17-2.6)

1. Unless parental rights have been terminated by a court of competent jurisdiction, the parent retains all rights under N.J.A.C. 6A:17-2.1 et seq.

G. Disputes and Appeals (N.J.A.C. 6A:17-2.7)

1. **When** If 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 Superintendent(s) **or designee(s)** of the involved **school** district(s) or the **child's** parent(s) ~~of the child will~~ **shall** immediately notify the **Executive** County Superintendent of Schools, who, **in consultation with the Department's McKinney-Vento Homeless Education Coordinator or designee, shall immediately** ~~will~~ decide the **child's** status ~~of the child within two working days~~. 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 of Education for a determination pursuant to N.J.A.C. 6A:3, **Controversies and Disputes**.
2. **When** If a **school** district designated as the **school** district of residence disputes ~~its such~~ designation **as the school district of residence**, or where no designation can be agreed upon by the involved **school** districts, the Superintendent(s) **or designee(s)** of the involved **school** districts **shall** ~~will~~ immediately notify the **Executive** County Superintendent of Schools, who **shall** ~~will~~ make a determination **immediately, if possible, but no later than within forty-eight hours** ~~within two working days~~. ~~The district may appeal the County Superintendent's determination to the Department of Education pursuant to N.J.A.C. 6A:23-5.2 (d), (e), and (f).~~



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- a3. If a ~~the~~ dispute occurs regarding the determination of the district of residence enrollment ~~does not involve the determination of homelessness and/or district enrollment~~, the school made by the district of residence disputing the Executive County Superintendent's determination may appeal to the Department of Education pursuant to N.J.A.C. 6A:23A-19.2(d), (e), and (f), and request a determination from the Division of Administration and Finance the Superintendent of the district of residence will immediately notify the County Superintendent of Schools. The County Superintendent will determine within two working days where the child will be enrolled based on the child's best interest pursuant to N.J.A.C. 6A:17-2.6(b).
- b. If an appeal of a determination of district of residence also includes an appeal of the determination of homelessness and/or school district of enrollment, the appeal shall be submitted to the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.
- a. ~~If the County Superintendent's decision is disputed, the Department of Education will provide for mediation as follows:~~
- ~~(1) The request must be made to the Department of Education in writing.~~
 - ~~(2) Requests for mediation will cite the issues in dispute and the relief sought.~~
 - ~~(3) A mediation conference must be conducted within five school days after the request is made at a time and place reasonably convenient to all parties in the dispute.~~
 - ~~(4) If the mediation does not result in an agreement, an appeal may be made to the Commissioner of Education pursuant to N.J.A.C. 6A:3 et seq.~~



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34. Any dispute or appeal shall not delay the homeless child's immediate **enrollment or continued enrollment in the school district** ~~entrance into school~~. The homeless child **shall** ~~will~~ be enrolled in the **school district in which enrollment or continued enrollment is sought by the parent**, ~~designated by the County Superintendent~~ pending resolution of the dispute or appeal.
45. Disputes and appeals involving the services provided to a homeless child with a **disability** ~~educational disabilities~~ **shall** ~~will~~ be made pursuant to N.J.A.C. 6A:14.

H. Tuition (N.J.A.C. 6A:17-2.8)

1. **When** If the homeless child is enrolled in a **school** district other than the **school** district of residence, the **school** district of residence **shall** ~~will~~ **pay to the school district of enrollment the tuition** ~~costs of tuition for the child to that district~~ pursuant to N.J.S.A. 18A:38-19 and N.J.A.C. 6A:23-3.1 **until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence shall no longer pay tuition to the school district of enrollment.**
2. The **school** district of residence **shall** ~~will~~ list the child on its annual Application for State School Aid (ASSA) pursuant to N.J.S.A. 18A:7F-33 **until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d. At that time, the school district of residence shall no longer list the student on its ASSA** ~~for as long as the parent remains homeless and the child is enrolled in another school district.~~
3. **The State shall assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12.1 and shall pay the tuition to the school district in which the child is currently enrolled until the parent establishes a permanent residence or is deemed domiciled in another jurisdiction pursuant to N.J.S.A. 18A:38-1.d, under the following circumstances:**



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- a3. If the **school** district of residence cannot be determined for ~~the~~ a homeless child; or
- b. ~~If~~ the **school** district of residence is outside of the State; or
- c. **If a child resides in a Department of Community Affairs-licensed emergency shelter or transitional living facility due to domestic violence for more than a year combined for the duration of the placement pursuant to N.J.S.A. 18A:7B-12.d. the State will assume fiscal responsibility for the tuition of the child pursuant to N.J.S.A. 18A:7B-12(d). The State will pay the tuition to the school district in which the child is currently enrolled for as long as the child and his or her parent remain homeless.**
 - (1)a. When the State assumes fiscal responsibility for the tuition of a homeless child, the State **shall** ~~will~~ pay to the **school** district in which the child is enrolled the **weighted base per pupil amount calculated** ~~appropriate T&E amount,~~ pursuant to N.J.S.A. 18A:7F-49~~3~~, and **the appropriate security and special education categorical aids per pupil pursuant to N.J.S.A. 18A:7F-55 and 56** ~~any appropriate additional cost factor for special education,~~ pursuant to N.J.S.A. 18A:7F-19.

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8330 STUDENT RECORDS

The Board of Education believes that information about individual students must be compiled and maintained in the interest of the student's educational welfare and advancement. The Board will strive to balance the student's right to privacy against the district's need to collect, retain, and use information about individual students and groups of students. The Board authorizes the establishment and maintenance of student files that include only those records mandated by law, rules of the State Board of Education, authorized administrative directive, and those records permitted by this Board.

The Superintendent shall prepare, present to the Board for approval, and distribute regulations that implement this Policy and conform to applicable State and Federal law and rules of the State Board of Education.

For purposes of this Policy:

1. ~~“Adult student” means a student who is at least eighteen years of age, or is attending an institution of postsecondary education, or is an emancipated minor.~~
2. ~~“Parent” means the natural or adoptive parent, the legal guardian, surrogate parent, or a person acting in place of a parent in accordance with N.J.A.C. 6A:32-2.1. Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under N.J.A.C. 6A:32. “Parent” shall also include, for the purposes of N.J.A.C. 6A:32, the adult student. A foster parent may act as a parent under the provisions of N.J.A.C. 6A:32 if the parent’s authority to make educational decisions on the student’s behalf has been terminated by a court of appropriate jurisdiction.~~

General Considerations

The Board of Education shall compile and maintain student records and regulate access, disclosure, or communication of information contained in educational records in a manner that assures the security of such records in



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accordance with the provisions of N.J.A.C. 6A:32-7.1 et seq. Student records shall contain only such information as is relevant to the education of the student and is objectively based on the personal observations or knowledge of the certified school personnel who originate(s) the record. The school district shall **provide annual, written notification to notify parents, and adult students, and emancipated minors annually in writing** of their rights in regard to student records and student participation in educational, occupational, and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. The school district shall make every effort to notify parents and adult students in their dominant language.

Nothing in this Policy shall be construed to prohibit certified school personnel, ~~at their discretion,~~ from disclosing student records to non-adult students or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the student or other persons.

No liability shall be attached to any member, officer, or employee of the Board of Education permitting access or furnishing student records in accordance with N.J.A.C. 6A:32-7.1 et seq. ~~Department of Education rules.~~

Student Information Directory

A student information directory is a publication of a ~~the school district~~ **Board of Education** that includes student information relating to a student as defined in N.J.A.C. 6A:32-2.1. **This information includes: name; grade level; date and place of birth; dates of school attendance; major field of study; participation in officially recognized activities; weight and height relating to athletic team membership; degrees; awards; the most recent educational agency attended by the student; and other similar information.** The student information directory shall be used only by authorized school district personnel and for designated official use by judicial, law enforcement, and medical personnel and not for general public consumption. In the event the school district publishes ~~information included in the~~ a student information directory, the Superintendent or designee will **provide a parent or adult student a ten-day period** ~~inform parents or adult students of such publication, and parents or adult students will be afforded a ten-day period to submit a written statement to~~ **submit** to the Superintendent a **written statement** prohibiting the school district from including any ~~or and~~ all types of information about the student in any student information directory before allowing access to such directory to educational, occupational, and military recruiters pursuant to N.J.S.A. 18A:36-19.1 and P.L. 107-110 sec. 9528, Armed Forces Recruiter Access to Students and Student Recruiting Information of the No Child Left Behind Act of 2001.



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School Contact Directory for Official Use

A school contact directory for official use is a compilation by the school district that includes the following information for each student: **name; address; telephone number; date of birth; and school enrollment.** The district shall compile and maintain, ~~but need not publish,~~ a school contact directory for official use, ~~that which~~ is separate and distinct from the student information directory. ~~The student contact directory may be provided School personnel shall provide information from the school contact directory for official use only to~~ **judicial and law enforcement personnel, and to medical personnel who are** currently providing services to the student in question. ~~In order for a parent or adult student To~~ **exclude any information from the school contact directory for official use the parent, or adult student, or emancipated minor shall notify the Superintendent or designee in writing on a form prescribed by the Commissioner of Education.**

Mandated and Permitted Student Records

Mandated student records are those records school districts have been directed to compile by State statute, regulations, or authorized administrative directive in accordance with N.J.A.C. 6A:32-7.3.

Permitted student records are **those student records not mandated pursuant to N.J.A.C. 6A:32-7.3, but** authorized by the Board ~~to be collected in order to~~ promote the **student's** educational welfare ~~of the student.~~ The Board shall authorize the permitted records to be collected by adopting ~~at a regular public Board meeting a resolution listing such permitted records or~~ **Policy and Regulation 8330, which will list such permitted records.**

Maintenance and Security of Student Records

The Superintendent or designee shall be responsible for the security of student records maintained in the school district. Policy and Regulation 8330 assure that access to such records is limited to authorized persons.

Records for each individual student ~~may~~ **shall be stored electronically or in paper format maintained in a central file at the school attended by the student.** ~~When records are maintained in different locations, a notation in the central file as to where such other records may be found is required.~~ **When student records are stored electronically, proper security and back-up procedures shall be administered.**



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~~Student health records shall be maintained and located in a locked cabinet or room in the school building or complex where the student is assigned. Records kept in electronic form shall be both accessible and secure.~~ Student health records, **whether stored on paper or electronically**, shall be maintained separately from other student records, until such time as graduation or termination, whereupon the health history and immunization record shall be removed from the student's health record and placed in the student's mandated record. Records shall be accessible during the hours in which the school program is in operation.

~~Security blocks will be installed for records stored in any computer system to protect against any security violations of the records stored therein. To guard against the loss of student records, the district shall maintain an updated hard copy and backup versions of student records.~~

Any district internet website shall not disclose any personally identifiable information about a student **without receiving prior written consent from the student's parent**, in accordance with **the provisions of N.J.S.A. 18A:36-35. Personally identifiable information means student names; student photos; student addresses; student e-mail addresses; student phone numbers; and locations and times of class trips.**

Access to Student Records

Only authorized organizations, agencies, or persons as defined in N.J.A.C. 6A:32-7.5 shall have access to student records, including student health records. Access to student records shall be provided to persons authorized such access under N.J.A.C. 6A:32-7.1 et seq. within ten days of a request, but prior to any review or hearing conducted in accordance with N.J.A.C. 6A.

The district shall control access to, disclosure of, and communication regarding information contained in student health records to assure access only to **people** ~~those authorized organizations, agencies, and persons under the conditions~~ permitted by Federal and State statute and regulations in accordance with N.J.A.C. 6A:32-7.5.

The district ~~{ will or may }~~ **may** charge a reasonable fee for reproduction **of student records**, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-52, provided that the cost does not effectively prevent the parents or adult students from exercising their rights under N.J.A.C. 6A:32-7 or **other Federal and State** ~~under rules and regulations regarding students with disabilities, including N.J.A.C. 6A:14.~~



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Access to and disclosure of a student's health record shall meet the requirements of the Family Education Rights and Privacy Act, 34 C.F.R. Part 99 (FERPA).

Only ~~The following~~ authorized organizations, agencies, ~~or and~~ persons **as defined in N.J.A.C. 6A:32-7.5** shall have access to student records, **including student health records**.

1. ~~The student who has the written permission of a parent and the parent of a student under the age of eighteen whether or not the child resides with that parent except per N.J.S.A. 9:2-4; the place of residence shall not be disclosed and access shall not be provided if denied by a court.~~
2. ~~Students at least sixteen years of age who are terminating their education in the district because they will graduate secondary school at the end of the term or no longer plan to continue their education.~~
3. ~~The adult student and the student's parent who has the written permission of such student, except that the parent shall have access without consent of the student as long as the student is financially dependent on the parent and enrolled in the public school system or if the student has been declared legally incompetent by a court of appropriate jurisdiction. The parent of the financially dependent adult student may not disclose information contained in the adult student's record to a second or third party without the consent of the adult student.~~
4. ~~Certified school district personnel who have assigned educational responsibility for the student shall have access to the general student record, but not to the student health record except under conditions permitted in N.J.A.C. 6A:16-1.5.~~
5. ~~Certified educational personnel who have assigned educational responsibility for the student and who are employed by agencies as indicated in N.J.A.C. 6A:32-7.5(e)5 shall have access to the general student record, but not to the student health record, except under conditions permitted in N.J.A.C. 6A:16-1.5.~~
6. ~~In order to fulfill its legal responsibility as a Board, the Board has access through the Superintendent or designee to information contained in a student's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult student.~~



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7. ~~Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to those portions of the record to the extent that is necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to those student files which such staff are directed to enter or record information and shall cease when the specific assigned task is completed.~~
8. ~~Accrediting organizations in order to carry out their accrediting functions, the Commissioner of Education and members of the New Jersey Department of Education staff who have assigned responsibility which necessitates the review of such records.~~
9. ~~Officials of other district Boards of Education within the State of New Jersey or other educational agencies or institutions where the student is placed, registered, or seeks to enroll subject to the following conditions:~~
 - a. ~~Original mandated student records school districts have been directed to compile by New Jersey statute, regulation or authorized administrative directive shall be forwarded to the receiving school district with written notification to the parent or adult student;~~
 - b. ~~Original permitted student records which the Board has required shall be forwarded to the receiving school district only with the written consent of the parent or adult student except where a formal sending-receiving relationship exists between the school districts;~~
 - c. ~~All records to be forwarded, including disciplinary records as specified in N.J.S.A. 18A:36-19(a), shall be sent to the Superintendent or designee of the school district to which the student has transferred within ten school days after the transfer has been verified by the requesting school district;~~
 - d. ~~The Superintendent or designee shall request all student records in writing from the school district of last attendance within two weeks from the date that the student enrolls in the new school district;~~



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- e. ~~The Superintendent or designee of the school district of last attendance shall upon request, provide a parent(s) or an adult student with a copy of the records disclosed to other educational agencies or institutions; and~~
- f. ~~Proper identification, such as a certified copy of the student's birth certificate, shall be requested at the time of enrollment in a new school district.~~
- 10. ~~Officials of the United States Department of Education who have assigned responsibilities which necessitate review of such records.~~
- 11. ~~Officers and employees of a State agency who are responsible for protective and investigative services for students referred to that agency, pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, the district shall ask such State agency for its cooperation in sharing the findings of the investigation.~~
- 12. ~~Organizations, agencies, and persons from outside the school if they have the written consent of the parent or adult student, except that these organizations, agencies, and persons shall not transfer student record information to a third party without the written consent of the parent or adult student.~~
- 13. ~~Organizations, agencies, and individuals outside the school, other than those specified in N.J.A.C. 6A:32-7.5(e), upon the presentation of a court order.~~
- 14. ~~Bona fide researchers who explain in writing, in advance to the Superintendent, the nature of the research project and the relevance of the records sought and who satisfy the Superintendent or designee that the records are to be used under strict conditions of anonymity and confidentiality. Such assurance shall be received in writing by the Superintendent prior to the release of information to the researcher.~~

Nothing in N.J.A.C. 6A:32-7.1 et seq. or in Policy and Regulation 8330 shall be construed to prohibit school personnel from disclosing information contained in the student health record to students or adults in connection with an emergency, if such knowledge is necessary to protect the immediate health or safety of the student or other persons.



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In **complying with N.J.A.C. 6A:32-7 – Student Records** ~~providing access to student records in accordance with N.J.A.C. 6A:32-7.5,~~ individuals shall adhere to requirements pursuant to N.J.S.A. 47:1A-10, the Open Public Records Act (OPRA) and 34 CFR Part 99, the Family Educational Rights and Privacy Act (FERPA).

Conditions for Access to Student Records

All authorized organizations, agencies, and persons **defined in N.J.A.C. 6A:32-7.1 et seq.** ~~with access to student records~~ shall have access to the records of a student subject to the following conditions **outlined in N.J.A.C. 6A:32-7.6(a).**

1. ~~No student record shall be altered or disposed of during the time period between a request to review the record and the actual review of the record.~~
2. ~~Authorized organizations, agencies, and persons from outside the school whose access requires the consent of parents or adult students shall submit their request in writing together with any required authorization to the Superintendent or designee.~~
3. ~~The Superintendent or designee shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage, or loss. In every instance of inspection of student records by persons other than parents, student, or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the student's record of the names of persons granted access, the reason access was granted, the time and circumstances of inspection, the records studied, and the purposes for which the data will be used.~~
4. ~~Unless otherwise judicially instructed, the district shall, prior to the disclosure of any student records to organizations, agencies, or persons outside the school district pursuant to a court order, give the parent or adult student at least three days' notice of the name of the requesting agency and the specific records requested. Such notification shall be provided in writing if practicable. Only those records related to the specific purpose of the court order shall be disclosed.~~



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5. ~~A record may be withheld from a parent of a student under eighteen or from an adult student only when the district obtains a court order or is provided with evidence that there is a court order revoking the right to access. Only that portion of the record designated by the court may be withheld. When the district has or obtains evidence of such court order, the parent or adult student shall be notified in writing within five days of his or her request that access to the record has been denied and that the person has the right to appeal this decision to the court issuing the order.~~

Rights of Appeal for Parents and Adult Students

Student records are subject to challenge by parents and adult students on the grounds of inaccuracy, irrelevancy, impermissive disclosure, inclusion of improper information or denial of access to organizations, agencies, and persons in accordance with N.J.A.C. 6A:32-7.7(a).

To request a change in the record or to request a stay of disclosure pending final determination of the challenged procedure, the **parent or adult student shall follow the procedures pursuant to N.J.A.C. 6A:32-7.7(b).** ~~process shall be as follows:~~

1. ~~A parent or adult student shall notify the Superintendent in writing of the specific issues relating to the student's record.~~
2. ~~Within ten days of notification, the Superintendent or designee shall notify the parent or adult student of the school district's decision.~~
3. ~~If the school district disagrees with the request, the Superintendent or designee shall meet with the parent or adult student to revise the issues set forth in the appeal.~~
4. ~~If the matter is not satisfactorily resolved, the parent or adult student may appeal this decision either to the Board of Education or the Commissioner of Education within ten days.~~
5. ~~If appeal is made to the Board of Education, a decision shall be rendered within twenty days. The decision of the Board may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:4, Appeals.~~



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6. ~~At all stages of the appeal process, the parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made part of the student's record with copies made available to the parent or adult student.~~

Appeals relating to student records for students with disabilities shall be processed in accordance with the requirements of N.J.A.C. 6A:32-7.7(b) ~~through 6 above.~~

Regardless of the outcome of any appeal, a parent or adult student shall be permitted to place **in the student record** a statement ~~in the student's record~~ commenting upon the information in the student's record or setting forth any reasons for disagreement with the decision **made in the appeal of the agency.** Such statements shall be maintained as part of the student's record as long as the contested portion of the record is maintained. If the contested portion of the record is disclosed to any party, the statement commenting upon the information shall also be disclosed to that party.

Retention and Disposal of Student Records

A student's record is considered to be incomplete and not subject to the provisions of the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., while the student is enrolled in the school district. The school district shall retain the student health record and the health history and immunization record according to the School District Records Retention Schedule, as determined by the New Jersey State Records Committee.

Student records of currently enrolled students, other than that described in N.J.A.C. 6A:32-7.8(e) ~~below~~, may be disposed of after the information is no longer necessary to provide educational services to a student **and in accordance with the provisions of N.J.A.C. 6A:32-7.8(b).** ~~Such disposition shall be accomplished only after written parental or adult student notification and written parental or adult student permission has been granted or after reasonable attempts of such notification and reasonable attempts to secure parental or adult student permission have been unsuccessful.~~



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Upon graduation or permanent departure of a student from the school district, the parent or adult student shall be notified in writing that a copy of the entire student's record will be provided to them upon request. Information in student records, other than that described in **N.J.A.C. 6A:32-7.8(e)** ~~1. below~~, may be disposed of, but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq. Such disposition shall be **in accordance with the provisions of N.J.A.C. 6A:32-7.8(c)2** ~~accomplished only after written parental or adult student notification and written parental or student permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental or adult student permission have been unsuccessful and prior written authorization has been obtained from the New Jersey Department of State, Records Committee.~~

- ~~1. — In accordance with N.J.A.C. 6A:32-7.8(e), the New Jersey public school district of last enrollment, graduation, or permanent departure of the student from the school district shall keep for 100 years a mandated record of a student's name, date of birth, name of parents, gender, citizenship, address, telephone number, health history and immunization, standardized assessment and test answer sheet (protocol), grades, attendance, classes attended, grade level completed, year completed, and years of attendance.~~

No additions shall be made to the record after graduation or permanent departure without the prior written consent of the parent or adult student.

In accordance with N.J.A.C. 6A:32-7.8(e), the New Jersey public school district of last enrollment, graduation, or permanent departure of the student from the school district shall keep for 100 years a mandated record of a student's name, date of birth, name of parents, gender, ~~citizenship, address, telephone number,~~ health history and immunization, standardized assessment **results and test answer sheet (protocol)**, grades, attendance, classes attended, grade level completed, year completed, and years of attendance.

N.J.S.A. 18A:36-19; 18A:36-19.1; 18A:40-4; 18A:40-19
N.J.A.C. 6A:32-7.1; 6A:32-7.2; 6A:32-7.3; 6A:32-7.4; 6A:32-7.5;
6A:32-7.6; 6A:32-7.7; 6A:32-7.8

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R 8330 STUDENT RECORDS

A. Definitions (N.J.A.C. 6A:32-2.1)

1. "Access" means the right to view, make notes, and/or reproduce ~~a~~ the student record.
2. "Adult student" means a **person** ~~student~~ who is at least eighteen years of age, or is attending an institution of postsecondary education, or is an emancipated minor.
3. "Mandated student records" means ~~those~~ student records that school districts ~~have been directed to compile~~ **pursuant to** ~~by~~ State statute, regulation, or authorized administrative directive.
4. "Parent" means the natural or adoptive parent, ~~the~~ legal guardian, surrogate **appointed according to N.J.A.C. 6A:14-2.2** ~~parent~~, or a person acting in place of a parent (**such as a grandparent or stepparent with whom the student lives or a person legally responsible for the student's welfare**) ~~in accordance with N.J.A.C. 6A:32-2.1.~~ Unless parental rights have been terminated by a court of appropriate jurisdiction, the parent retains all rights under N.J.A.C. 6A:32. "Parent" ~~shall also include, for the purposes of N.J.A.C. 6A:32, the adult student.~~ **In addition, a** foster parent may act as a parent under the provisions of N.J.A.C. 6A:32 if the parent's authority to make educational decisions on the student's behalf has been terminated by a court of appropriate jurisdiction.
5. "Permitted student records" means records that the Board of Education has authorized, by resolution adopted at a regular public meeting, to be collected ~~in order~~ to promote the educational welfare of ~~the~~ students.



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6. "Student record" means information related to an individual student gathered within or outside the school **district system** and maintained within the school **district system** regardless of the physical form in which it is maintained. **Essential in this definition is the idea that a**Any information that is maintained for the purpose of second-party review is considered a student record. Therefore, information recorded by certified school personnel solely as a memory aid, **and** not for the use of a second party, is excluded from this definition.
7. ~~"Parent surrogate(s)" means an individual or individuals approved by the Board in accordance with N.J.A.C. 6A:14-2.2 to act on behalf of a student whose parent(s) is not available to assure the student's educational rights.~~
78. "Student information directory" means a publication of the ~~district~~ **Board of Education that** which includes the following information relating to a student: **It shall be used only by authorized school district personnel and for designated official use by judicial, law enforcement, and medical personnel and not for general public consumption. The information shall be** the student's: name;; grade level;; date and place of birth;; dates of attendance;; major field of study;; participation in officially recognized activities;; weight and height relating to athletic team membership;; degrees;; awards;; the most recent educational agency attended by the student;; and other similar information.

B. General Considerations (N.J.A.C. 6A:32-7.1)

1. **The Board of Education shall compile and maintain student records and regulate access, disclosure, or communication of information contained in educational records in a manner that assures the security of such records in accordance with the provisions of N.J.A.C. 6A:32-7.1. et seq.**
21. Student records shall contain only such information as is relevant to the education of the student and is objectively based on the personal observations or knowledge of **the** certified school personnel who originate(s) the record.



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32. The **school** district shall **provide annual, written notification to** ~~notify~~ parents, and adult students, **and emancipated minors** ~~annually in writing~~ of their rights in regard to student records and student participation in educational, occupational, and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. The **school** district shall make every effort to notify parents and adult students in their dominant language.
43. A non-adult student may assert rights of access only through his or her parents. However, nothing in **N.J.A.C. 6A:32-7 et seq. or in** Policy or Regulation 8330 shall be construed to prohibit certified school personnel; **from disclosing at** ~~in~~ their discretion, ~~from~~ ~~disclosing~~ student records to non-adult students or to appropriate persons in connection with an emergency, if such knowledge is necessary to protect the health or safety of the student or other persons.
54. The parent or adult student, ~~including an emancipated minor,~~ shall have access to their own records and have access to or be specifically informed about only that portion of another student's record that contains information about his or her own child or himself or herself.
65. The Superintendent or designee shall require all permitted student records of currently enrolled students to be reviewed annually by certified school personnel to determine the education relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the student or educational program to be deleted from the records except that prior notice shall be given for classified students in accordance with N.J.A.C. 6A:14, Special Education. Such information shall be disposed of and not be recorded elsewhere. No record of any such deletion shall be made.
76. No liability shall be attached to any member, officer, or employee of the Board of Education permitting access or furnishing student records in accordance with **N.J.A.C. 6A:32-7.1 et seq.** ~~Department of Education rules.~~



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87. When the parent's or adult student's dominant language is not English or the parent or adult student is deaf, the **school** district shall provide interpretation of the student's records in the dominant language of the parents or adult student.
98. Student health records shall be maintained separately from other student records and handled, according to the requirements of N.J.A.C. 6A:32-7.1 **et seq.**, until such time as graduation or termination, whereupon the health history and immunization record shall be removed from the student's health record and placed in the student's mandated record.

C. School Contact Directory **for Official Use (N.J.A.C. 6A:32-7.2)**

1. The **Board of Education** district shall compile and maintain, ~~but need not publish,~~ a school contact directory for official use, ~~which that~~ is separate and distinct from the student information directory.
 - a. School personnel shall provide information from the school contact directory for official use only to judicial and law enforcement personnel, and to medical personnel ~~who are~~ currently providing services to the student in question.
 - b. Upon request from a court, other judicial agency, law enforcement agency, or medical service provider ~~who is~~ currently providing services to the student in question, school personnel shall promptly verify the enrollment of a student and provide the requester with all the information about that student that is contained in the school contact directory for official use.
2. ~~To In order for a parent or adult student to~~ exclude any information from the school contact directory for official use, the parent, ~~or~~ adult student, **or emancipated minor** shall notify the Superintendent or designee in writing ~~on a form prescribed by the Commissioner of Education.~~



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- a. ~~The form shall explain the purpose of the school contact directory for official use is to allow judicial, law enforcement, and medical personnel to contact the parent when necessary, and that the school contact directory for official use is only accessible by school, judicial, law enforcement, and medical personnel who are currently providing services to the student in question.~~

D. Mandated and Permitted Student Records (**N.J.A.C. 6A:32-7.3**)

1. Mandated student records shall include the following:

- a. The student's name, address, telephone number, date of birth, name of parent(s), gender, citizenship, standardized assessment **results** and ~~test answer sheets (protocol)~~, grades, attendance, classes attended, grade level completed, and year completed, **and years of attendance**;
- b. Record of daily attendance;
- c. Descriptions of student progress according to the system of student evaluation used in the school district;
- d. History and status of physical health compiled in accordance with State regulations, including results of any physical examinations given by qualified school district employees **and immunizations**;
- e. Records pursuant to rules and regulations regarding the education of students with disabilities; and
- f. All other records required by **N.J.A.C. 6A** ~~the State Board of Education~~.

2. Permitted student records are **those student records not mandated pursuant to N.J.A.C. 6A:32-7.3, but** authorized by the Board to promote the student's educational welfare and include the following as authorized by this Board upon adoption of Policy and Regulation 8330. These records **may** include, but **are may not be** limited to:



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- a. Personally authenticated observations, assessments, ratings, and anecdotal reports recorded by teaching staff members in the performance of their professional responsibilities and intended for review by another person, provided the record is dated and signed by the originator. Information recorded solely as a memory aid for the originator becomes a student's record when it is reviewed by any other person, including a substitute;
- b. Information, scores, and results obtained from standardized tests or by approved tests conducted by professional personnel;
- c. Educationally relevant information provided by the parent, ~~or~~ adult student, **or emancipated minor** regarding the student's achievements or school activities;
- d. Any correspondence with the student and/or the student's parents;
- e. Driver education certificate;
- f. Emergency notification form;
- g. New student registration form;
- h. Withdrawal or transfer form;
- i. Change of schedule form;
- j. Records of disciplinary infractions, penalties, and disciplinary hearings;
- k. Records of the student's co-curricular and athletic activities and achievements;
- l. Class rank;
- m. Awards and honors;
- n. Notations of additional records maintained in a separate file;



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- o. The statement from a student's parent, ~~or~~ adult student, **or emancipated minor** regarding a contested portion of the record;
- p. Entries indicating review of the file by an authorized person;
- q. _____;
- r. _____;
- s. _____; and
- t. _____.

E. Maintenance and Security of Student Records (N.J.A.C. 6A:32-7.4)

- 1. The Superintendent or designee shall be responsible for the security of student records maintained in the school district **and shall devise procedures/regulations for assuring that access to such records is limited to authorized persons.** Policy and Regulation 8330 assures that access to such records is limited to authorized persons.
- 2. Records for each individual student ~~may shall~~ be **stored either electronically or in paper format. When student records are stored electronically, proper security and backup procedures shall be administered** ~~maintained in a central file at the school attended by the student. When records are maintained in different locations, a notation in the central file as to where other such records may be found is required.~~
- 3. Student health records, **whether stored on paper or electronically**, shall be maintained and located in a locked cabinet or room in the school building or complex which the student is assigned. ~~Records kept in electronic form shall be both accessible and secure. Student health records shall be maintained separately from other student records, until such time as graduation or termination whereupon the health history and immunization record shall be removed from the student's health record and placed in the student's mandated record.~~
- 4. Records shall be accessible during the hours in which the school program is in operation.



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4. ~~Security blocks will be installed for records stored in computerized systems to protect against security violations of the records stored therein. To guard against the loss of student records, the district shall maintain an updated hard copy and backup versions of student records.~~
5. Mandated student records required as part of programs established through State-administered entitlement or discretionary funds from the U.S. Department of Education shall be maintained for a period of five years after graduation, termination from the school district, or age **twenty-three** 23, whichever is longer, and shall be disposed of in accordance with N.J.S.A. 47:3-15 et seq.
6. Any district ~~internet~~ website shall not disclose any personally identifiable information about a student, in accordance with N.J.S.A. 18A:36-35.

F. Access to Student Records (N.J.A.C. 6A:32-7.5)

1. **Only authorized organizations, agencies, or persons as defined in N.J.A.C. 6A:32-7.5 shall have access to student records, including student health records. Access to student records shall be provided to persons authorized such access under N.J.A.C. 6A:32-7.1 et seq. within ten days of a request, but prior to any review or hearing conducted in accordance with N.J.A.C. 6A.**
24. The **school** district shall control access to, disclosure of, and communication regarding information contained in student health records to assure access only to **people** ~~those persons under the conditions~~ permitted by Federal and State statute and regulations **or stated in N.J.A.C. 6A:32-7.5(e) and section G. below.**
32. The **school** district ~~{ — will or — may }~~ **may** charge a reasonable fee for reproduction **of student records**, not to exceed the schedule of costs set forth in N.J.S.A. 47:1A-52, provided that the cost does not effectively prevent the parents or adult students from exercising their rights under N.J.A.C. 6A:32-7 or **other Federal and State** ~~under~~ rules and regulations regarding students with disabilities, **including N.J.A.C. 6A:14.**



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43. Access to and disclosure of a student's health record shall meet the requirements of the Family Education Rights and Privacy Act, 34 C.F.R. Part 99 (FERPA).

G. Authorized Organizations, Agencies, and Persons with Access to Student Records (**N.J.A.C. 6A:7.5(e)**)

Access shall include only the following:

1. A student who has the written permission of a parent and the parent of a student under the age of eighteen whether ~~or not~~ the child resides with ~~the~~ that parent except per N.J.S.A. 9:2-4;
 - a. The place of residence shall not be disclosed; and
 - b. Access shall not be provided if denied by a court.
2. Students at least sixteen years of age who are terminating their education in the **school** district because they will graduate secondary school at the end of the term or no longer plan to continue their education;
3. ~~An~~ **The** adult student and ~~the student's~~ parent who has the written permission of **an adult** ~~such~~ student, except that the parent shall have access without consent of the student as long as the student is financially dependent on the parent and enrolled in the public school system or if the student has been declared legally incompetent by a court of appropriate jurisdiction. The parent of the financially dependent adult student may not disclose information contained in the adult student's record to a second or third party without the consent of the adult student;
4. Certified school district personnel who **are** ~~have~~ assigned educational responsibility for the student shall have access to the general student record; but not to the student health record; except under conditions permitted in N.J.A.C. 6A:16-~~2.41-5~~;



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5. Certified educational personnel who have assigned educational responsibility for the student and who are employed by agencies listed below shall have access to the general student record, but not to the student health record except under conditions permitted in N.J.A.C. 6A:16-1.52.4:
 - a. An approved private school for the disabled;
 - b. A State facility;
 - c. Accredited nonpublic schools in which students with educational disabilities have been placed according to N.J.S.A. 18A:46-14; or
 - d. Clinics and agencies approved by the Department of Education.
6. ~~To fulfill In order to fulfill~~ its legal responsibility ~~as a Board~~, the Board of Education shall have ~~has~~ access through the Superintendent or designee to information contained in a student's record. Information shall be discussed in executive session unless otherwise requested by the parent or adult student-;
7. Secretarial and clerical personnel under the direct supervision of certified school personnel shall be permitted access to ~~those~~ portions of the record to the extent ~~that is~~ necessary for the entry and recording of data and the conducting of routine clerical tasks. Access shall be limited only to ~~those~~ student files **in** which such staff are directed to enter or record information, and shall cease when the specific assigned task is completed-;
8. Accrediting organizations in order to carry out their accrediting functions-;
9. The Commissioner of Education and ~~members of the~~ New Jersey Department of Education staff **members** who **are** have assigned responsibility ~~that which~~ necessitates the review of such records-;



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10. Officials of other district Boards of Education within the State of New Jersey or other educational agencies or institutions where the student is placed, registered, or seeks to enroll subject to the following conditions:
 - a. Original mandated student records ~~that~~ schools ~~districts~~ have been directed to compile by New Jersey statute, regulation, or authorized administrative directive shall be forwarded to the receiving school district with written notification to the parent or adult student;
 - b. Original ~~mandated~~ ~~permitted~~ student records ~~that~~ ~~which~~ ~~the a~~ Board of Education has required shall be forwarded to the receiving school district only with the written consent of the parent or adult student, except where a formal sending-receiving relationship exists between the school districts;
 - c. All records to be forwarded, including disciplinary records as specified in N.J.S.A. 18A:36-19(a), shall be sent to the Superintendent or designee of the school district to which the student has transferred within ten school days after the transfer has been verified by the requesting school district;
 - d. The Superintendent or designee shall request ~~all student records~~ in writing **all student records** from the school district of last attendance within two weeks from the date that the student enrolls in the new school district;
 - e. **Upon request**, ~~t~~The Superintendent or designee of the school district of last attendance shall ~~upon request~~, provide a parent(s) or an adult student with a copy of the records disclosed to other educational agencies or institutions; and
 - f. Proper identification, such as a certified copy of the student's birth certificate **or other proof of the child's identity pursuant to N.J.S.A. 18A:36-25.1**, shall be requested at the time of enrollment in a new school district.
11. Officials of the United States Department of Education ~~who have~~ assigned responsibilities ~~that~~ ~~which~~ necessitate review of such records;



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12. Officers and employees of a State agency ~~who are~~ responsible for protective and investigative services for students referred to that agency, pursuant to N.J.S.A. 9:6-8.40. Wherever appropriate, the **Board of Education** ~~district~~ shall ask ~~the~~ such State agency for its cooperation in sharing the findings of ~~an~~ the investigation;
13. **Agency caseworkers or other representatives of a State or local child welfare agency who have the right to access a student's case plan when the agency or organization is legally responsible, in accordance with State law, for the care and protection of the student, consistent with 20 U.S.C. § 1232g(b)(1)(L);**
- ~~14~~13. Organizations, agencies, and persons from outside the school if they have the written consent of the parent or adult student, ~~except that these.~~ Organizations, agencies, and persons shall not transfer student record information to a third party without the written consent of the parent or adult student;
- ~~15~~14. Organizations, agencies, and individuals outside the school, other than those specified in N.J.A.C. 6A:32-7.5(e), upon the presentation of a court order;
- ~~16~~15. Bona fide researchers who explain ~~in writing, in advance~~ to the Superintendent, the nature of the research project and the relevance of the records sought. **Researchers shall also** ~~and who~~ satisfy the Superintendent or designee that the records **will** ~~are to~~ be used under strict conditions of anonymity and confidentiality. Such assurance shall be received in writing by the Superintendent prior to the release of information to the researcher;
17. **Nothing in N.J.A.C. 6A:32-7.1 et seq. and Policy and Regulation 8330 shall be construed to prohibit school personnel from disclosing information contained in the student health record to students or adults in connection with an emergency, if such knowledge is necessary to protect the immediate health or safety of the student or other persons; and**
18. **In complying with N.J.A.C. 6A:32-7.1 et seq., individuals shall adhere to requirements pursuant to N.J.S.A. 47:1A-1 et seq. - the Open Public Records Act (OPRA) and 20 U.S.C. § 1232g, 34 CFR Part 99 - the Family Educational Rights and Privacy Act (FERPA).**



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H. Conditions for Access to Student Records (N.J.A.C. 6A:32-7.6)

All authorized organizations, agencies, and persons **defined in N.J.A.C. 6A:32-7.1 et seq. as listed below** ~~with access to student records~~ shall have access to the records of a student, subject to the following conditions:

1. No student record shall be altered or disposed of during the time period between a request to review the record and the actual review of the record.
2. Authorized organizations, agencies, and persons from outside the school whose access requires the consent of parents or adult students shall submit **to the Superintendent or designee** ~~the their~~ request in writing together with any required authorization, ~~to the Superintendent or designee.~~
3. The Superintendent or designee shall be present during the period of inspection to provide interpretation of the records where necessary and to prevent their alteration, damage, or loss. In every instance of inspection of student records by persons other than parents, student, or individuals who have assigned educational responsibility for the individual student, an entry shall be made in the student's record of the name(s) of persons granted access, the reason access was granted, the time, and circumstances of inspection, the records studied, and the purposes for which the data will be used.
4. ~~Unless otherwise judicially instructed, the district shall,~~ **P**prior to the disclosure of any student records to organizations, agencies, or persons outside the school district pursuant to a court order, **the Superintendent or designee shall** give the parent or adult student at least three days' notice of the name of the requesting agency and the specific records requested **unless otherwise judicially instructed.** Such notification shall be provided in writing, if practicable. Only ~~these~~ records related to the specific purpose of the court order shall be disclosed.
 - a. **Notice to the parent shall not be required when he or she is party to a court proceeding involving child abuse and neglect or dependency matters, consistent with 20 U.S.C. § 1232g(b)(2)(B).**



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5. A record may be withheld from a parent ~~of a student under eighteen~~ or from an adult student only when the **school** district obtains a court order or is provided with evidence that there is a court order revoking the right to access. Only that portion of the record designated by the court **shall** ~~may~~ be withheld. When the district has or obtains evidence of such court order, the parent or adult student shall be notified in writing within five days of his or her request that access to the record has been denied; and that the person has the right to appeal this decision to the court issuing the order.

I. Rights of Appeal for Parents and Adult Students (N.J.A.C. 6A:32-7.7)

1. Student records are subject to challenge by parents and adult students on grounds of inaccuracy, irrelevancy, impermissive disclosure, inclusion of improper information, or denial of access to organizations, agencies, and persons. The parent or adult student may seek to: expunge inaccurate, irrelevant, or otherwise improper information from the student's record; insert additional data as well as reasonable comments as to the meaning and/or accuracy of the records; and/or request an immediate stay of disclosure pending final determination of the challenge procedure as described in N.J.A.C. 6A:32-7.7.
2. To request a change in the record or to request a stay of disclosure pending final determination of the challenged procedure, the process shall be as follows:
 - a. A parent or adult student shall notify **in writing** the Superintendent ~~in writing~~ of the specific issues relating to the student's record.
 - b. Within ten **school** days of notification, the Superintendent or designee shall notify the parent or adult student of the school district's decision.
 - c. If the school district disagrees with the request, the Superintendent or designee shall meet with the parent or adult student to **resolve** ~~revise~~ the issues set forth in the appeal.



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- d. If the matter is not satisfactorily resolved, the parent or adult student **has ten school days to** ~~may~~ appeal this decision ~~either to the Board of Education or the Commissioner of Education within ten days.~~
 - e. If **an** appeal is made to the Board of Education, a decision shall be rendered within **twenty** ~~20~~ **school** days. The decision of the Board **of Education** may be appealed to the Commissioner pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6A:43, **Controversies and Disputes Appeals**.
 - f. At all stages of the appeal process, the parent or adult student shall be afforded a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made a part of the student's record with copies made available to the parent or adult student.
- 3. Appeals relating to ~~the~~ **student** records of students with disabilities shall be processed in accordance with the requirements **of I.2.** above.
 - 4. Regardless of the outcome of any appeal, a parent or adult student shall be permitted to place **in the student record** a statement ~~in the student's record~~ commenting upon the information in the student's record or setting forth any reasons for disagreement with the decision **made in the appeal** ~~of the agency~~.
 - a. Such statements shall be maintained as part of the student's record as long as the contested portion of the record is maintained. If the contested portion of the record is disclosed to any party, the statement commenting upon the information shall also be disclosed to that party.
- J. Retention and Disposal of Student Records **(N.J.A.C. 6A:32-7.8)**
- 1. A student's record is considered to be incomplete and not subject to the provisions of the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq., while the student is enrolled in the school district.



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- a. The school district shall retain the student's health record and the health history and immunization record according to the School District Records Retention Schedule, as determined by the New Jersey State Records Committee.
2. Student records of currently enrolled students, other than the records that must be maintained for one hundred years as described in **N.J.A.C. 6A:32-7.8(e) and 56**, below, may be disposed of after the information is no longer necessary to provide educational services to a student.
 - a. Such disposition shall be accomplished only after written parental or adult student notification and written parental or adult student permission has been granted or after reasonable attempts of such notification and reasonable attempts to secure parental or adult student permission have been unsuccessful.
3. Upon graduation or permanent departure of a student from the school district;
 - a. The parent or adult student shall be notified in writing that a copy of the entire student's record will be provided to them upon request.
4.
 - b. Information in student records, other than ~~that the records that must be maintained for one hundred years as~~ described in **N.J.A.C. 6A:32-7.8(e) and 56**, below, may be disposed of, but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq.
 - ca. Such disposition shall be accomplished only after written parental or adult student notification; and written parental or adult student permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental or adult student permission have been unsuccessful; and prior written authorization has been obtained from the New Jersey State Records Committee in the New Jersey Department of State.



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45. No additions shall be made to the record after graduation or permanent departure without the prior written consent of the parent or adult student.
56. The New Jersey public school district of last enrollment, graduation, or permanent departure of the student from the school district shall keep for one hundred years a mandated record of a student's name, date of birth, name of parents, gender, ~~citizenship,~~ address, ~~telephone number,~~ health history and immunization, standardized assessment **results** and ~~test answer sheet (protocol),~~ grades, attendance, classes attended, grade level completed, year completed, and years of attendance.

Issued:



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CLASS SIZE

R 2312 CLASS SIZE

A. Size Range

1. The superintendent will assign pupils to classes in accordance with the following class size guidelines:

	Minimum	Target	Maximum
Kindergarten-Gr. 3:	17	19	21
Grades 4-5:	22-3 18	23-7 21	25 22
Grades 6-8:	23-4 23	26	27

Special Education: As dictated by N.J.A.C. 6A:14-4.3

Entitlement Programs: As dictated by applicable state and federal guidelines.

2. Class size guidelines may be waived for:
 - a. Physical education classes
 - b. Large group instructional units
3. These guidelines are intended to be flexible and should be applied in a manner that takes into account:
 - a. The subject matter taught in the class,
 - b. The nature of instructional methods used in the class,
 - c. The use of special facilities and equipment, if any, and
 - d. Temporary fluctuations in the numbers of pupils enrolled in the school and in specific classes.

B. Corrective Measures



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1. Where the number of pupils assigned to a nonexempt class exceeds the maximum number, the following actions may be taken:
 - a. Consideration may be given to assigning an instructional aide to assist the teacher,
 - b. Classes may be organized into team teaching components,
 - c. The Principal may consider reorganizing the overcrowded grade level or subject area into a greater number of classes. A proposal to increase the number of classes taught by teaching staff members may require the creation of new positions and must be forwarded to the Superintendent.
2. The number of class sections will be determined no later than August 1 of each year for K-5 and no later than June 1 of each year for 6-8.

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