

**STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE
COMMENT/RESPONSE FORM**

This comment and response form contains comments from and since the November 2, 2016, meeting of the State Board of Education when the draft regulations were considered at Proposal Level.

Topic:	Interdistrict Public School Choice	Meeting Date:	April 5, 2017
Code Citation:	N.J.A.C. 6A:12	Level:	Adoption
Division:	Finance	Completed by:	Office of Interdistrict Choice and Nonpublic Schools

Summary of Comments and Agency Responses:

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

- A. Mark W. Biedron, President
State Board of Education
- B. Dr. Ronald Butcher, Member
State Board of Education
- C. Jack Fornaro, Member
State Board of Education
- D. Edithe Fulton, Member
State Board of Education
- 1. Maggie Downham and Valerie Smith, Directors
New Jersey Interdistrict Public School Choice Association
- 2. David Astor, Superintendent
Ogdensburg Borough School District
- 3. Sarah Bilotti, Superintendent
North Warren Regional School District
- 4. Dr. Evelyn Browne, Superintendent
Folsom Borough School District
- 5. Dr. Gina Cinotti, Superintendent
Netcong School District
- 6. Dr. John McAllister, Member
Stone Harbor Board of Education
- 7. Kelly Reising, Assistant Principal

Audubon High School

8. Dr. James Sarruda, Superintendent
Northern Burlington County Regional School District
9. Dr. Robert R. Zywicki, Superintendent
Weehawken Township School District
10. John Nittolo, Superintendent
Green Township School District

1. **COMMENT:** The commenter asked whether State aid and local property tax dollars follow a student when he or she begins to attend school under the Interdistrict Public School Choice Program (choice program). **(A)**

RESPONSE: Local property tax dollars and State aid are not transferred from the sending district to the choice district. When a choice student enrolls in a choice district, the student is no longer included in the resident district's enrollment count; the choice district counts choice students as residents for purposes of State aid. The State also provides choice aid to the choice district to offset the choice district's local tax levy for each choice student.

2. **COMMENT:** The commenter asked whether the sending district receives additional State transportation aid for busing a choice student. The commenter also asked if State transportation aid for choice students changes based on the number of students being transported to a particular choice school. **(D)**

RESPONSE: Transportation aid for choice students is determined in the same manner as resident students regardless of the number of students transported to a choice school. Pursuant to N.J.A.C. 6A:27-4.1 and 4.2, choice students in kindergarten through grade eight are eligible for transportation services if they live more than two miles but no more than 20 miles from the choice school. High school students in the choice program are eligible if they live more than 2.5 miles but no more than 20 miles from the choice school to be eligible for transportation. If the cost to transport eligible choice students exceeds the annual maximum limit, currently \$884 per student, the parent or guardian has the option of paying the difference above \$884 or receiving aid in lieu of transportation.

3. **COMMENT:** The commenter asked for figures on the cost to transport choice students and the number of families receiving the current \$884 in aid rather than transportation. **(B)**

RESPONSE: The Department does not distinguish choice students from resident students in its transportation data collection. However, the Department estimates approximately 1,900 of the 5,109 current choice students receive aid in lieu of transportation, and nearly all of the remaining students receive transportation to their choice schools.

4. **COMMENT:** The commenter asked whether elementary and middle school students who live less than two miles from school and high school students who live less than 2.5 miles from school must walk or if any type of transportation or assistance is provided to students who live close to school. **(C)**

RESPONSE: State law does not require school districts to transport students who live within the applicable two- or 2.5-mile radius from their assigned school. School districts may provide transportation for students within this radius, but no state transportation aid would be provided.

5. **COMMENT:** The commenter requested the Department amend N.J.A.C. 6A:12-1.2(c), which prohibits school districts from maintaining at the same time a tuition program and a choice program in the grade levels available to choice students, to allow choice districts to enroll tuition students if the State’s annual appropriations act places enrollment caps on the choice program. Recognizing the prohibition in Administrative Code mirrors N.J.S.A. 18A:36B-21.b, the commenter stated the statutory provision is based on full, open enrollment of out-of-district students to assure there are no inequalities in student selection between choice students and students enrolled on a tuition basis. The commenter further stated allowing choice districts to enroll students on a tuition basis after all interested choice students are accepted will allow more out-of-district students to attend specialized programs in choice districts. (1)

RESPONSE: The Department cannot propose the suggested amendment because it is not consistent with N.J.S.A. 18A:36B-21.b, which states, in part: “A choice district shall not be eligible to enroll students on a tuition basis pursuant to N.J.S.18A:38-3 while participating in the interdistrict public school choice program.”

6. **COMMENT:** The commenter requested the Department amend N.J.A.C. 6A:12 to allow choice districts with specialized programs to charge tuition to students who do not intend to enroll in the choice specialized program. (2)

RESPONSE: The Department cannot propose the suggested amendment because it is not consistent with N.J.S.A. 18A:36B-21.b.

7. **COMMENT:** The commenter requested a revision to N.J.S.A. 18A:36B-21 to allow choice districts that accept choice students into specialized programs to charge tuition for non-choice students to attend the school district as a general education student outside of the specialized program. (8)

RESPONSE: The commenter’s request to amend State law is outside of the scope of the rulemaking and the State Board of Education’s authority.

8. **COMMENT:** The commenter requested the Department amend N.J.A.C. 6A:12-2.2(a), which requires a student applying for the choice program to be enrolled in preschool through grade 12 in the sending district for at least one full year immediately preceding enrollment in a choice district including time spent at any school that a student is required by law to attend, to clarify eligibility of choice students attending choice districts that terminate at eighth grade (K-8) to enroll as a choice student in the high school to which the K-8 choice district sends its students. (1)

RESPONSE: Students currently enrolled in a K-8 choice district met the requirements for choice enrollment as set forth in N.J.S.A. 18A:36B-20.a prior to enrollment in the choice program. However, choice students in a K-8 choice district do not automatically attend the same high school as their non-choice peers pursuant to a send-receive agreement because choice students are not residents of the K-8 school district. Additionally, N.J.S.A. 18A:36B-20.e states: “Once a student is enrolled in a designated school, the student shall not be required to reapply each school year for enrollment in any

designated school of the choice district and shall continue to be permitted to be enrolled until graduation.” Keeping with the provisions and to ensure continuity of education for choice students, the Department permits a choice district that receives high school aged students pursuant to a send-receive relationship with a K-8 choice district to establish a policy of enrollment preference for the K-8 school district’s choice students.

9. **COMMENT:** The commenter requested the Department amend N.J.A.C. 6A:12 and the choice student application to establish certainty for choice students who attend K-8 choice districts to advance to receiving high schools with their peers. The commenter said most choice students enter her K-8 choice district in kindergarten and are accepted into the receiving high school as a courtesy, which could end with administrative changes at the receiving school district. The commenter further stated establishing clear rules regarding the status of choice students leaving K-8 choice districts is paramount for the continuity of educational programming and realization of the choice program’s intended options for families. (4)

RESPONSE: The Department does not have the authority to require a school district to accept choice students if the school district has determined it does not have enough available seats. The enabling statute, N.J.S.A. 18A:36B-20.a, states, in part: “Openings in a designated school of a choice district shall be on a space-available basis, and if more applications are received for a designated school than there are spaces available, a lottery shall be held to determine the selection of students.”

10. **COMMENT:** The commenter said language on the Department’s website that defines Tier 1 and Tier 2 students in terms of eligibility for the choice program disallows current choice students in K-8 choice districts from moving to a choice district for high school because the student is required to return to his or her school district of residence for at least one year before being eligible again for the choice program. The commenter stated the tier classifications place the above-mentioned choice students into Tier 2 status and choice districts are not obligated to accept Tier 2 students, which include students who attend public school outside their districts of residence or private school or are being homeschooled. The commenter stated this policy conflicts with the legislative intent of the Interdistrict Public School Choice Program Act, which was to give public school students who could not afford tuition at a private or public school to be the first students eligible for the choice program. (1)

RESPONSE: The Department disagrees the eligibility guidelines conflict with the Interdistrict Public School Choice Program Act, as they are taken directly from the statute at N.J.S.A. 18A:36B-20.a. Students currently enrolled in a K-8 choice district met the requirements for choice enrollment as set forth in N.J.S.A. 18A:36B-20.a prior to enrollment in the choice program. However, choice students in a K-8 choice district do not automatically attend the same high school as their non-choice peers pursuant to a send-receive agreement because choice students are not residents of the K-8 school district. Additionally, N.J.S.A. 18A:36B-20.e states: “Once a student is enrolled in a designated school, the student shall not be required to reapply each school year for enrollment in any designated school of the choice district and shall continue to be permitted to be enrolled until graduation.” Keeping with the provisions and to ensure continuity of education for choice students, the Department permits a choice district that receives high school aged students pursuant to a send-receive relationship with a K-8 choice district to establish a policy of enrollment preference for the K-8 school district’s choice students.

11. **COMMENT:** The commenter asked the Department to define clearly the meaning of Tier 1 and Tier 2 students to allow choice students in a K-8 choice district to advance to the receiving high school with their class. (2)

RESPONSE: The Department identifies as “Tier 1” the choice applicants who are eligible to participate in the program pursuant to N.J.S.A. 18A:36B-20.a, as they are enrolled at the time of application in preschool through grade 12 in the sending school district and have attended school in the sending school district for at least one full year immediately preceding enrollment in the choice district. The Department identifies as “Tier 2” all other choice applicants, who may be accepted only on a space-available basis as set forth in N.J.S.A. 18A:36B-20.a.

Because students currently enrolled in a choice district with a terminal grade have already met the requirements for choice enrollment as set forth in N.J.S.A. 18A:36B-20a, the Department considers them to have met the eligibility requirements for subsequent enrollment in a choice high school to which the current choice district sends their high school-aged students pursuant to a send-receive relationship. Additionally, N.J.S.A. 18A:36B-20e states that “Once a student is enrolled in a designated school, the student...shall continue to be permitted to be enrolled until graduation.” With these provisions in mind, to ensure continuity of education for these students, the Department permits a choice district to establish a policy of enrollment preference for high school applicants who are choice students enrolled a district with whom they have a send-receive relationship.

12. **COMMENT:** The commenter asked the Department to amend N.J.A.C. 6A:12 to allow choice students in a K-8 choice district to apply to another choice district for high school as a Tier 1 student, which would be the same as a charter school student applying to a choice district. The commenter further stated categorizing a choice student in a K-8 choice district as a Tier 2 student for application to another choice district for high school is contrary to the spirit of the choice program and should be changed effective for the 2017-2018 school year. (7)

RESPONSE: The Department disagrees as statute and regulations support the identification of charter school students as Tier 1 students. N.J.S.A. 18A:36B-20.a provides that “a student shall be enrolled at the time of application in grades preschool through 12 in a school of the sending district and have attended school in the sending district for at least one full year immediately preceding enrollment in the choice district,” to be eligible for participation in the choice program. The ‘sending district’ includes any school district that a student in a particular district of residence is required by law to attend.” Since charter school students are public school students, N.J.A.C. 6A:12-1.3 defines “sending district” as “the choice student’s district of residence, charter school, or any school the student is required by law to attend.” Thus, charter school students meet the eligibility requirements for the choice program as Tier 1 students. Students who attend a K-8 choice district are not “required by law to attend” a choice school and, therefore, do not meet the eligibility or “Tier 1” requirements set forth in the statute.

13. **COMMENT:** The commenter stated the classification of choice students in K-8 choice districts as Tier 2 students for eligibility to attend high school in a choice district is unfair and discriminates against choice students who would like to pursue another choice district with higher academic, more diverse or specialized programs, and a different culture and climate. The commenter further stated choice students in K-8 choice districts

should be given preference to attend another nearby choice district or allowed to apply to another choice district as a Tier 1 student. (6)

RESPONSE: N.J.S.A. 18A:36B-20 sets forth the eligibility guidelines for participation in the program; the Department cannot propose regulations that are inconsistent with the statute.

14. **COMMENT:** The commenter recommended the Department amend N.J.A.C. 6A:12 to provide specific guidance as to how the Department allocates choice seats in an equitable manner among choice districts. The commenter stated the “first come, first served” distribution of choice seats creates an artificial cap system whereby school districts that joined the choice program in 2010 sometimes have hundreds of more choice seats than newer choice districts, which creates an inequity among choice districts. (9)

RESPONSE: The choice program is entirely State funded and funding is not available for the total amount of seats every choice district could accommodate. Therefore, enrollment limits were put in place by the Department starting in the 2014-2015 school year. From 2015-2016 through 2017-2018, the enrollment limit has been applied uniformly to all choice districts by capping the enrollment at the choice district’s prior-year actual choice enrollment. The Department has made a few exceptions to the enrollment limitation; for example, choice districts with a sibling preference policy may seek additional choice seats to accommodate siblings of currently enrolled choice students. Exceptions have been narrow because of the amount of funding available. The enrollment limitations were put in place to ensure that the amount of funds available for the choice program would benefit students throughout the state, rather than just a few select choice districts.

15. **COMMENT:** The commenter recommended the Department amend N.J.A.C. 6A:12 to provide a special expedited application process for school districts that offer unique college-ready academic programs such as International Baccalaureate or the Advanced Placement Capstone program. The commenter further stated school districts that offer special college-ready programs and are the only school district in the county to do so should be allocated choice seats above the current cap. (9)

RESPONSE: The Department will take the commenter’s suggestion into consideration during its assessment of the efficiency of the program and will propose any needed amendments when the review is completed.

16. **COMMENT:** The commenter questioned the Department’s stated need to assess the choice program’s efficiency when the program is successful and choice districts have waiting lists. The commenter suggested the Department examine some of the choice districts rather than the choice program. The commenter further stated some parents take advantage of the choice program to send their children out of the school district to succeed even though the district of residence also is a choice district. (2)

RESPONSE: Annually, the Department assesses the choice program with regard to parent and choice district satisfaction and on a variety of metrics. The Department has determined the choice program has been successful in increasing options and flexibility for parents and students in selecting a school that best meets the needs of each student. Given the funding constraints and resulting enrollment limits, the Department is more comprehensively assessing the program’s efficiency and its alignment to Department

goals. The incidence of students leaving one choice district to attend another choice district is included in the assessment.

17. **COMMENT:** The commenter expressed concern about the reduction in options and available seats for the choice program and advocated for a return to the original formula. The commenter stated her school district routinely approves to accept up to 15 choice students per year but is limited to two choice students. (3)

RESPONSE: The choice program is entirely State funded and funding is not available for the total amount of seats every choice district could accommodate. Therefore, enrollment limitations were put in place by the Department starting in the 2014-2015 school year. From 2015-2016 through 2017-2018, the enrollment limit has been applied uniformly to all choice districts by capping the enrollment at the choice district's prior-year actual choice enrollment. The Department has made a few exceptions to the enrollment limitation; for example, choice districts with a sibling preference policy may seek additional choice seats to accommodate siblings of currently enrolled choice students. The enrollment limitations were put in place to ensure that the amount of funds available for the choice program would benefit students throughout the state, rather than just a few select choice districts.

18. **COMMENT:** The commenter requested that N.J.A.C. 6A:12 be amended to allow her choice district, which serves students in grades seven through 12 but is approved for the choice program only for grades nine through 12, to adjust some of its choice seats to grades seven and eight without altering its overall number of choice students. The commenter stated admitting students to the choice program in seventh grade would give staff the opportunity to help students develop health academic habits for high school, identify students in need of remediation prior to ninth grade, and create an opportunity for choice students to be a part of the school and greater community earlier in their academic careers. (7)

RESPONSE: The commenter's request does not necessitate an amendment to Administrative Code. The Department is currently in the process of developing a choice district application amendment process and anticipates this process will be available to choice districts for the 2017-2018 school year.

19. **COMMENT:** The commenter recommended the Department amend N.J.A.C. 6A:12 to ensure the reporting of choice program student performance data on the annual school performance reports. (9)

RESPONSE: This comment is outside the scope of the proposed rulemaking as N.J.A.C. 6A:12 does not govern the content of the annual school performance reports.

20. **COMMENT:** The commenter recommended the Department amend N.J.A.C. 6A:12 to require the Department to host an annual choice program seminar to publically review choice program data and provide for the sharing of best practices among choice districts. (9)

RESPONSE: Department-led seminars are typically the prerogative of the program office and do not necessitate an Administrative Code amendment. The program office will consider the commenter's request for a seminar and determine the interest from participating choice districts.

- 21. COMMENT:** The commenter stated an evaluation of the choice program’s impact that was conducted for a doctoral dissertation resulted in the following conclusions: participating superintendents perceived the choice program as having a positive impact relative to equity; the Department’s cap on student enrollment in the choice program was an issue of contention for participating superintendents; participating superintendents perceived the choice program as not being effective because of a perceived lack of funding or funding that has not been expanded to meet enrollment demand; and the choice program has had a positive financial impact on some school districts that cannot be ignored. The commenter stated the evaluation also resulted in the following policy recommendations: the choice program should be funded at a level that allows the supply of seats to meet the demand; choice seat caps should be eliminated; and the choice program should be mandatory and Statewide. (9)

RESPONSE: The appropriation of additional funding for the choice program is outside the scope of the rulemaking. Because the choice program is entirely State funded and funding has not been available for the total number of seats every choice district could accommodate, enrollment limitations were put in place by the Department starting in the 2014-2015 school year to ensure the continued financial viability of the program and students who are currently enrolled in the choice program continue to be permitted to be enrolled until graduation.

N.J.S.A. 18A:36B-21 authorizes the choice program to be Statewide but also requires the Commissioner to “establish an interdistrict public school choice program which shall provide for the creation of choice districts” and for school districts to apply to become a choice district. The statute does not authorize the Department to mandate school district participation in the choice program.

- 22. COMMENT:** The commenter requested the application process for school districts to join the choice program for the 2017-2018 school year be opened as soon as possible and the application made available to allow additional school districts to become choice districts. The commenter said the arbitrary closing of the choice program is contrary to N.J.A.C. 6A:12-3.1 and the program’s purpose to increase options and flexibility for parents and students. (9)

RESPONSE: Due to limited funds, enrollment limits on choice districts were put in place by the Department starting in the 2014-2015 school year. Additional school districts have not been given an opportunity to apply to participate in the choice program since the 2014-2015 school year because State funding has not been available for new choice districts and additional choice seats.

- 23. COMMENT:** The commenter stated limiting new enrollment in choice program to only siblings of current choice students is disastrous because the enrollment constraint will keep low the number of choice students in the choice district. The commenter also stated parents are growing weary of being on the choice district’s extensive waiting list. The commenter further stated the enrollment limitation and the waiting list will end the choice program in small choice districts. (10)

RESPONSE: The choice program is entirely State funded and funding is not available for the total amount of seats every choice district could accommodate. Therefore, enrollment limits were put in place by the Department starting in the 2014-2015 school year. From 2015-2016 through 2017-2018, the enrollment limit has been applied uniformly to all choice districts by capping the enrollment at the choice district’s prior-

year actual choice enrollment. The Department has made a few exceptions to the enrollment limitation; for example, choice districts with a sibling preference policy may seek additional choice seats to accommodate siblings of currently enrolled choice students. Exceptions have been narrow because of the amount of funding available. The enrollment limitations were put in place to ensure that the amount of funds available for the choice program would benefit students throughout the state, rather than just a few select choice districts.



**Adoption Level
April 5, 2017**

State of New Jersey
DEPARTMENT OF EDUCATION
PO Box 500
TRENTON, NJ 08625-0500

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

KIMBERLEY HARRINGTON
Acting Commissioner

TO: Members, State Board of Education

FROM: Kimberley Harrington
Acting Commissioner

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

**REASON
FOR ACTION:** Readoption

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

SUNSET DATE: June 19, 2017

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:12, Interdistrict Public School Choice, without amendments. The chapter is designed to assist school districts interested in applying to and implementing the Interdistrict Public School Choice program (choice program).

The choice program was originally established by the State Board of Education in October 1999 as a five-year pilot. The rules were amended in December 2000 to conform to N.J.S.A.18A:36B-1 et seq., the Interdistrict Public School Program Act of 1999, which became effective January 18, 2000, and expired on June 30, 2005. The program continued under the rules that were amended again in December 2004. The chapter was readopted without amendments in 2009 with an expiration of December 21, 2016. The Interdistrict Public School Choice Act was amended in 2010 to expand the program to additional school districts; accordingly, N.J.A.C. 6A:12 was amended in 2012. The chapter expires on June 19, 2017.

The choice program has been in operation for six years in its expanded form and has experienced tremendous growth in the number of participating school districts and student enrollments. The choice program has been successful in achieving its purpose: to increase options and flexibility for parents and students in selecting a school that best meets the needs of each student, thereby improving educational opportunities for New Jersey citizens.

The Department proposes at this time to readopt the chapter without amendment to continue the rules. The Department is continuing to assess the efficiency of the program and after a thorough review will propose any needed amendments.

The following Summary provides an overview of each subchapter and section.

Subchapter 1. General Provisions

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

This section establishes the chapter's purpose, which is to provide students and parents with options and flexibility in selecting a school that best meets the needs of each student.

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

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

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

The section defines terms used throughout the chapter.

Subchapter 2. Choice Program Eligibility Criteria

The subchapter establishes the eligibility criteria for school district and student participation in the choice program.

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

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

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

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

Subchapter 3. Choice District Application Procedures

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

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

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

Subchapter 4. Choice Student Admissions

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

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

The section provides the procedures for calculation of a sending district's enrollment, for admissions lotteries, and for a sending district to limit the number of students participating in the choice program through the adoption of a resolution. The section also prohibits a sending district from restricting the participation of students in the choice program, if the students provide written notice of intent to apply to a specialized educational program that is offered by the choice district and not by the sending district.

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

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

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

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

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

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

Subchapter 5. Choice Student Post Enrollment Policies

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

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

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

Subchapter 6. Appeals

This subchapter establishes the rules governing appeals to the Commissioner.

N.J.A.C. 6A:12-6.1 Appeals from Commissioner determinations

This section allows an eligible choice district to appeal a determination by the Commissioner not to grant an eligible district's application for participation in the choice program according to N.J.A.C. 6A:4, Appeals.

N.J.A.C. 6A:12-6.2 Appeals from denial of enrollment

The section allows a parent or legal guardian to appeal to the Commissioner the denial of a choice student application for enrollment in a choice district in accordance with N.J.A.C. 6A:3, Controversies and Disputes.

Subchapter 7. Administrative Responsibilities of Choice Districts

This subchapter establishes the administrative responsibilities of choice districts.

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

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

Subchapter 8. Transportation

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

N.J.A.C. 6A:12-8.1 Student transportation

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

Subchapter 9. Funding

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

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

The section stipulates choice students qualify for State aid pursuant to N.J.S.A. 18A:36B-14 et seq., and the sending district will receive transportation aid pursuant to N.J.A.C. 6A:12-9.1. The section also requires the sending district to maintain fiscal responsibility for any choice student enrolled in or determined to require a private day or residential school, except the choice district will be required to contribute State aid received for the student and the sending district will be responsible for the balance.

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

Social Impact

The Interdistrict Public School Choice Program has proven to be beneficial for choice districts, choice students, and their parents. In 2016-2017, there are 131 operating choice districts serving 5,200 students. The choice students benefit from attending a school district with rigorous academics and a culture that better meets their individual needs. In addition, students who reside in choice districts, their parents, and their communities have benefited from many of the following: innovative programs; expansion of opportunities in STEM, the arts, and career-oriented programs; and enrichment of the school community through the addition of students from different backgrounds and with experiences different from those of the choice districts' resident students.

Economic Impact

The rules proposed for readoption provide economic benefits to the school districts accepting out-of-district students through the Interdistrict Public School Choice Program. For each enrolled choice student, the choice district receives choice aid equal to the per-pupil amount paid by local property tax dollars, plus the amount of State aid attributable to the choice student.

Federal Standards Statement

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

Jobs Impact

The Department does not expect the rules proposed for readoption will have an impact on the generation or loss of jobs.

Agriculture Industry Impact

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

Regulatory Flexibility Statement

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

Housing Affordability Impact Analysis

The rules proposed for re-adoption will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the rules proposed for re-adoption would evoke a change in the average costs associated with housing because the rules govern affected school districts that voluntarily participate in the Interdistrict School Choice Program and sending school districts.

Smart Growth Development Impact Analysis

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

Full text of the rules proposed for re-adoption follows:

N.J.A.C. 6A:12, INTERDISTRICT PUBLIC SCHOOL CHOICE

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CHAPTER 12. INTERDISTRICT PUBLIC SCHOOL CHOICE

SUBCHAPTER 1. GENERAL PROVISIONS

6A:12-1.1 Purpose

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

6A:12-1.2 Scope

- (a) Any school district in the State established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes will be eligible to apply to become a choice district. A choice district may accept non-resident students into an educational program in the choice district at the expense of the State.
- (b) District boards of education may choose to apply to participate in the choice program as choice districts by receiving choice students pursuant to this chapter.

- (c) District boards of education may not maintain at the same time both a tuition program pursuant to N.J.S.A. 18A:38-3 and a choice program in the grade levels that the school district has made available to choice students.
- (d) District boards of education currently in a sending/receiving relationship are eligible to participate in the choice program unless otherwise legally prohibited.

6A:12-1.3 Definitions

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

"Choice district" means a public school district established pursuant to chapter 8 or chapter 13 of Title 18A of the New Jersey Statutes that is authorized under the Interdistrict Public School Choice Program to open a school or schools to students from a sending district.

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

"Choice student" means an out-of-district student who is accepted into a choice district.

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

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

SUBCHAPTER 2. CHOICE PROGRAM ELIGIBILITY CRITERIA

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

A district board of education of a school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes is eligible to participate in the choice program if it has classroom space available, completes an application form provided by the Department pursuant to this chapter, and receives approval from the Commissioner to participate.

6A:12-2.2 Eligibility criteria for students

- (a) To be eligible to participate in the program, a student shall be enrolled at the time of application in grades preschool through 12 in a public school of the sending district and have attended school in the sending district for at least one full year immediately preceding enrollment in a choice district including time spent at any school that a student in a particular district of residence is required by law to attend.
1. If a student attends public school in his or her district of residence and is counted in that district's October Application for State School Aid and the student's family moves during the school year and the student attends public school in his or her new district of residence for the remainder of the school year, the student shall have satisfied the one-year eligibility requirement for application to the school choice program.
 2. The one-year requirement shall not apply to a student applying to enroll in kindergarten in a choice district if that student already has a sibling enrolled in and attending the choice district and if the district of residence of that student does not offer a public pre-school program.

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

SUBCHAPTER 3. CHOICE DISTRICT APPLICATION PROCEDURES

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

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

6A:12-3.2 (Reserved)

SUBCHAPTER 4. CHOICE STUDENT ADMISSIONS

6A:12-4.1 Sending district procedures

- (a) A sending district may not restrict the participation of its students in the choice program where the district's students provide written notice of intent to apply to a specialized educational program that is offered by the choice district and not offered in the sending district.

(b) The calculation of the enrollment of a sending district shall be based on the enrollment count as reported on the Application for State School Aid in October preceding the school year during which the restriction on enrollment shall be applicable.

1. Students from the sending district who are already enrolled in and attending a school choice program shall not be included in the newly calculated number of students eligible to attend a school choice district.
2. When the multiplication of the grade level enrollment by the percentage established in the sending district's resolution adopted pursuant to N.J.S.A. 18A:36B-21.a(1) results in a number with a decimal, the number will be rounded to the next whole number.
3. The sending district's resolution restricting its students' participation may not be applied to the final grade level available in the sending district.

(c) Where a district board of education of a sending district has adopted a resolution pursuant to N.J.S.A. 18A:36B-21.a(1) to impose a limit on the number of its students participating in the choice program pursuant to this subsection, and when the student notices of intention to participate in the choice program exceed that limit, the sending district shall:

1. Hold a public lottery to determine the selection of students for participation in the choice program;
2. Notify the parent or guardian of every student who has submitted notice of intent to participate in the choice program of the date and time of the lottery;
3. Assign a number to each student participating in the lottery and notify the parent or guardian of the number assigned to their child(ren); and
4. Develop a waiting list based on the lottery.

(d) Where a district board of education of a sending district has adopted a resolution to impose a limit on the number of its students participating in the choice program pursuant to this subsection, and when the student notices of intention to participate in the choice

program exceed that limit, before conducting the lottery, the sending district may give preference to siblings of its resident students already enrolled in and attending the choice district.

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

6A:12-4.2 Choice district procedures for students meeting the eligibility requirements

- (a) Choice districts shall admit choice students on a space available basis.

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

- (2) In the event that the choice district elects to give preference to siblings of students already enrolled in and attending the choice district and there are no spaces available after granting permission to participate in the choice program to siblings of students already enrolled in and attending the choice district, then the choice district shall conduct a lottery first for the remaining applicants to assign them a place on the waiting list.

6A:12-4.3 Choice student application procedures

- (a) The Commissioner shall establish a student application timeline each year no later than September 1.
- (b) Within five business days of the due date set by the Commissioner pursuant to the timeline in (a) above, the choice district shall provide to the Department electronic notification of the number of students who enroll.
- (c) The choice district shall provide written notification of receipt of each notice of enrollment to each sending district's board of education within 10 days of the due date for receipt of such notice of enrollment from a choice student resident in that sending district.
- (d) A choice student applicant may seek from the Commissioner by a showing of good cause a waiver of the student application deadlines established in the timeline in (a) above.

6A:12-4.4 Choice district procedures for students not meeting eligibility requirements

- (a) If seats remain available in a choice district after exhausting the list of applicants who meet the requirements of N.J.A.C. 6A:12-2.2(a), including those on any waiting list that has been established through the application process, then the choice district may elect to

fill the seats with public school students who do not meet the requirements of N.J.A.C.

6A:12-2.2(a), and with non-public school students.

- (b) Choice districts may accept applications from public school students who do not meet the requirements of N.J.A.C. 6A:12-2.2(a) and/or non-public school students up until the deadline set by the Commissioner.
- (c) Upon the receipt of an application from a public school student who does not meet the requirements of N.J.A.C. 6A:12-2.2(a) or a non-public school student, the choice district shall send a letter to the parent of the student including the following information:
 - 1. Whether the choice district will consider public school students who do not meet the requirements of N.J.A.C. 6A:12-2.2(a) and non-public school students for admission to the district. If the choice district has not yet decided, inform the parents of when the decision is expected to be made;
 - 2. That public school students who do not meet the requirements of N.J.A.C. 6A:12-2.2(a) and non-public school students will not be considered for admission until the choice district has conducted the application cycle and has exhausted its waiting list of students who meet the requirements of N.J.A.C. 6A:12-2.2(a) for the grade level to which they have applied;
 - 3. That the choice district may need to conduct a lottery to select the students to be offered admission to the choice district depending on the seats available and the number of applications received from public school students who do not meet the requirements of N.J.A.C. 6A:12-2.2(a) and/or non-public school students; and
 - 4. That the parents of those public school students who do not meet the requirements of N.J.A.C. 6A:12-2.2(a) and non-public school students will be fully informed of the lottery process in the event that a lottery is required, the date it will be held, and what number has been assigned to the applicant.

SUBCHAPTER 5. CHOICE STUDENT POST ENROLLMENT POLICIES

6A:12-5.1 Choice student enrollment

- (a) Once enrolled in a choice district, the choice student may remain enrolled and is not required to submit annual or periodic applications.
- (b) Upon acceptance of a choice student, the choice district is obligated to retain the choice student until graduation or until the choice student voluntarily withdraws.
- (c) In the event of termination of the choice program in that district or Statewide, any student enrolled in that choice district shall be entitled to remain enrolled in that district until graduation.
- (d) In the event that a public school student who is currently a choice student attending school in a choice district moves to another district, that public student is eligible to remain in the choice district as a choice student without application.
- (e) A resident student of a choice district who moves during the school year may be allowed to remain in the choice district until the end of the school year. The student may apply to the choice program as a funded student for the next school year. If the student moves after the application deadline or otherwise is unable to receive funding as a choice student in the school district for the subsequent school year, the choice school district may enroll the student as an unfunded choice student in that year, and automatically convert the student's enrollment to a funded choice student if he or she remains in the choice program.

SUBCHAPTER 6. APPEALS

6A:12-6.1 Appeals from Commissioner determinations

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

6A:12-6.2 Appeals from denial of enrollment

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

SUBCHAPTER 7. ADMINISTRATIVE RESPONSIBILITIES OF CHOICE DISTRICTS

6A:12-7.1 General provisions

- (a) Choice districts shall accept all credits toward graduation that were awarded by another district board of education for each choice student it accepts.
 - 1. Choice districts shall award a diploma to a choice student participating in the program if that student meets the graduation requirements of the choice district and of the State of New Jersey.
- (b) A choice district shall establish and maintain a parent information center.
 - 1. The center shall collect and disseminate information about participating programs and schools, and shall assist parents and legal guardians in submitting applications for enrollment of students in an appropriate program and school.
 - 2. The information about participating programs and schools shall be posted on the choice district's website.

- (c) A choice district shall file reports with the Department at the end of each application cycle. A choice district's reports shall include demographic and student participation information, fiscal and programmatic information, and updates on the number of available openings.

SUBCHAPTER 8. TRANSPORTATION

6A:12-8.1 Student transportation

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

SUBCHAPTER 9. FUNDING

6A:12-9.1 General provisions

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

SUBCHAPTER 10. (RESERVED)