

# RULE ADOPTIONS

## AGRICULTURE

(a)

### DIVISION OF PLANT INDUSTRY

#### Certification

#### Readoption: N.J.A.C. 2:16

Proposed: March 2, 2020, at 52 N.J.R. 369(a).

Adopted: December 16, 2021, by the State Board of Agriculture and Douglas H. Fisher, Secretary, Department of Agriculture.

Filed: December 16, 2021, as R.2022 d.020, **without change**.

Authority: N.J.S.A. 4:1-11.1, 4:1-21.2, 4:1-21.7, and 4:8-17.13 et seq.

Effective Date: December 16, 2021.

Expiration Date: December 16, 2028.

#### Summary of Public Comment and Agency Response:

**No public comments were received.**

**Take notice** that pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 2:16 were scheduled to expire on July 23, 2020. The Secretary of the Department of Agriculture timely filed a notice of proposal to readopt the chapter. Pursuant to Executive Order Nos. 127 (2020) and 244 (2021) and P.L. 2021, c. 103, any chapter of the New Jersey Administrative Code that would otherwise have expired during the Public Health Emergency originally declared in Executive Order No. 103 (2020) is extended through January 1, 2022. Therefore, this chapter has not yet expired pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 103.

#### Federal Standard Analysis

Federal Seed Act regulations at 7 CFR 201.1 through 201.78 establish minimum standards and procedures as conditions for certification of seed. According to those regulations, in order to qualify as a seed-certifying agency for purposes of the Federal Seed Act, an agency, such as the New Jersey Department of Agriculture, must enforce standards and procedures as conditions for its certification of seed that meet or exceed the standards and procedures specified in the Federal Seed Act regulations. The standards established at N.J.A.C. 2:16 exceed the Federal regulations at Subchapters 2, 3, 7, and 8 by imposing specific certification standards for seed, sod, turfgrass, and vegetative grasses.

New Jersey's standards, however, are consistent with those standards recommended by the Association of Seed Certifying Agencies (AOSCA). That organization's membership is composed of associations and agencies from 42 states and six countries that certify seed and are dedicated to establishing genetic standards and certification procedures, and promoting uniform standards, procedures, and policies among its members. Information about AOSCA can be found at [www.aosca.org](http://www.aosca.org). Due to the wide acceptability of AOSCA's standards, local and national buyers have assurance that seed certified under their standards have met acceptable purity standards. In addition, since the majority of other states participate in AOSCA, the readopted rules are necessary for New Jersey feed providers to remain competitive in the marketplace. Using the higher AOSCA standards results in superior seed and sod, this brings higher prices to the farmers and growers and greater satisfaction by the consumers. As a result, the benefits to the consumer and farmer or grower of using AOSCA standards far outweigh the cost of meeting the additional requirements.

These rules are also consistent with the rulemaking requirements of the Department regarding the certification of agricultural seeds, tubers, grass sod, grass sod plugs, and grass stolons grown in this State, dictated at N.J.S.A. 4:1-21.7, and the requirements for seed labeling and distribution, found at N.J.S.A. 4:8-17.13 et seq.

**Full text** of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 2:16.

## COMMUNITY AFFAIRS

(b)

### DIVISION OF CODES AND STANDARDS

#### Uniform Construction Code

#### Adopted Amendments: N.J.A.C. 5:23-7.19, 7.31, 11.2, and 11.4

Proposed: October 4, 2021, at 53 N.J.R. 1659(a).

Adopted: February 18, 2022, by Lt. Governor Sheila Y. Oliver, Commissioner, Department of Community Affairs.

Filed: March 9, 2022, as R.2022 d.047, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:27D-119 and 52:2D-123.10.

Effective Date: April 4, 2022.

Expiration Date: February 9, 2029.

#### Summary of Public Comments and Agency Responses:

Comments were received from Denise Lanza, Co-Chair, Public Policy Committee, New Jersey Recreation and Park Association; Mitchell Malec, a retired former employee of the Department of Community Affairs (Department); and the Honorable William Pikolycky, Mayor, Borough of Woodbine.

1. COMMENT: The New Jersey Recreation and Park Association (NJRPA) thanked the Department for working collaboratively with the NJRPA on these regulations and expressed appreciation for the fact that the proposed rulemaking allows developers to customize elements of the play space according to local and site restrictions and options.

RESPONSE: The Department thanks the commenter for the support.

2. COMMENT: The Honorable William Pikolycky, Mayor, Borough of Woodbine, stated that a strict interpretation of N.J.A.C. 5:23-11.4(e)2, which requires unitary surfacing in all areas of the playground, would require that unitary surface be provided in all areas of a playground, including internal pathways linking play areas. While the commenter recognized that internal pathways need to be barrier-free in accordance with the Americans with Disabilities Act of 1990 (ADA), the use of unitary surfacing for these pathways is not only unnecessary, but is cost-prohibitive. The commenter provided a conceptual plan for a completely inclusive playground that delineated the significant coverage areas for ADA accessibility both within the safety zones of the play equipment for proposed unitary surfacing and alternative materials for the internal pathways. The commenter recommended alternative language as follows: "Unitary surfacing shall be provided in the safety zone of all play equipment."

RESPONSE: Section 2b(2)(c) of P.L. 2018, c. 104 requires that, "the rules and regulations promulgated pursuant to this subsection shall also include but shall not be limited to...the use of unitary surfacing in all areas of the playground to allow the maximum possible access to the playground for people using wheeled mobility devices." The Department agrees that a strict interpretation of the proposed language could require an entire park to utilize unitary surfacing; that was not the intention of the rulemaking, nor P.L. 2018, c. 104. As such, upon adoption, to allow for flexibility while still ensuring the provisions set forth within Jake's Law (the Law) are met, the Department has added clarifying language to ensure that this subsection shall not be construed to require unitary surfacing in areas outside the immediate play areas and pathways to those play areas. Therefore, for the plans provided by the commenter, the play areas should be connected by a trail of unitary surfacing, but the concrete areas should be allowed to stay, as well.

The remainder of the comments were received from Mitchell Malec, a retired former employee of the Department. His comments are presented verbatim to ensure that no detail is lost through summation.

3. COMMENT: "Upon my initial review of these proposed amendments I was awed at how well the Department, with input from

others, was able to mimic the text of Jake's Law. The Department appears to have successfully completed all of their assigned tasks. I am amazed that the Department, based on recommendations received from experts in the field, have developed such comprehensive provisions in so short of time." [sic]

RESPONSE: The Department recognizes this statement as a part of the submitted comments on this proposal, but no response is needed or warranted.

4. COMMENT: "The Department's statement that the design of completely inclusive playgrounds is not a requirement but a option being made available to the playground designer does not appear correct in the event that State funds are made available to counties for the purpose of constructing completely inclusive playgrounds. I'll assume, at this time or in the near future, State funds are or will be made available for this purpose. After which every county receiving funding is required to construct and maintain at least one completely inclusive playground designed in accordance with the UCC including, if adopted, these proposed regulations. Please clarify, or obtain clarification if needed, as to whether one of each type of completely inclusive playground (two to five years of age or five to twelve years of age) is required if both are to be constructed or just one is required to be a completely inclusive playground pursuant to the Law." [sic]

RESPONSE: The commenter is correct that in the event State funds are made available to counties for the purpose of constructing completely inclusive playgrounds, every county receiving funding shall be required to construct and maintain at least one completely inclusive playground. However, this funding is provided when an application for monies is received, so counties receiving monies for the construction of completely inclusive playgrounds will have done so by choice. Counties are not required to apply for funding.

Regarding playgrounds for different ages, Section 2.2 of Consumer Product Safety Commission's (CPSC) Public Playground Safety Handbook allows for one playground with separation of equipment that is intended for use by different ages. In addition, the Department and all other parties involved in the rulemaking process for these regulations felt that there was no need to create separate standards for playgrounds for children two to five years of age and children five to 12 years of age. One completely inclusive playground is all that is needed to meet the requirements of the Law.

5. COMMENT: "The Department's proposed amendments are both specific and vague in regard to completely inclusive playgrounds. In order to be deemed a completely inclusive playground, full compliance with the proposed regulations is required. This may be a blessing or a curse. As examples: Both Jake's Place Playground in Cherry Hill, NJ and and Preston's Playground in Newark, Delaware are considered all-inclusive playgrounds; however, both do not totally comply with the proposed regulations and therefore can not be deemed a completely inclusive playground. So a newly constructed county State funded playground designed and built identical to Jake's Place or Preston's Place would not fulfill the requirements to create a completely inclusive playground. I believe the intent of the Law was to promote the design and construction of completely inclusive playgrounds or all-inclusive playgrounds with the incentive of prioritization of application and Green Acres funds. It is recommended that the Departments proposed regulations include more flexibility as to when a playground or an all-inclusive playground is considered a completely inclusive playground or appropriately revise the proposed regulations." [sic]

RESPONSE: The Department recognizes that there are playgrounds that currently exist that would not meet the criteria of completely inclusive playgrounds as defined in the Law and in this rulemaking. This rulemaking applies to newly constructed playgrounds. The Department disagrees that these rules are not flexible enough to allow for a multitude of different playground designs for completely inclusive playgrounds.

6. COMMENT: "I'm fully aware that playgrounds in conformance with the Americans with Disabilities Act (ADA), U.S. Consumer Products Safety Commission's Handbook for Public Playground Safety (CPSC), UCC Barrier Free Subcode (BF), and the UCC Playground Safety Subcode (PSS) may not be all-inclusive or completely inclusive playgrounds. (Accessible but not necessarily inclusive.) It is recommended that the Department compare what is currently required for

playgrounds and determine what supplemental requirements (appears to be at least seven by Law) must be met to become recognized as a completely inclusive playground. To my understanding and based on the UCC, playgrounds are currently required to be in conformance with the CPSC, BF, and PSS. Note that ADA is not included since the Department relies on the provisions of Chapter 11 of the UCC IBC to meet ADA provisions. Although the 'User note' in Chapter 11 of the UCC IBC states that the provisions in the I-Codes are intended to meet or exceed the requirements in the Federal accessibility requirement found in the Americans with Disabilities Act and the Fair Housing Act, the 2018 and 2021 editions of the IBC do not appear to be in total compliance with (or do not contain all requirements of) the 2010 ADA standards. I recall that this issue was brought to the attention of the Department, maybe by a law suit, but since the Department does not enforce Federal ADA provisions or the PSS, others were required (and are required) to address the nonconformance to ADA provisions. The Department should address this issue as soon as possible. To assist the Department, it is suggested that IBC Chapter 11 Section 1110.4.13 which states that play areas containing play components designed and constructed for children shall be located on an accessible route be compared with the 2010 ADA Standards Chapter 10 Section 1008 Play Areas and Chapter 2, Section 240 Play Areas. {Reference 2010 ADA Standards for Accessible Design Pocket Guide} In addition, the current recreation percentages of N.J.A.C. 5:23-7.31 and the proposed amendment requiring elevated play elements to meet ADA standards for only completely inclusive playgrounds should be reviewed. Note that the proposed N.J.A.C. 5:23-7.31(c) is an ADA requirement but because this is not reflected in Chapter 11 of the UCC IBC it is not a UCC requirement for playgrounds other than as proposed for completely inclusive playgrounds - a potential law suit for the non-ADA compliant playground." [sic]

RESPONSE: The Americans with Disabilities Act (ADA) is a Federal Law that applies to new construction and requires that building owners improve the accessibility to their existing buildings, though it does not require specific improvements. Neither the Department nor local enforcing agencies are responsible for the enforcement of the ADA. Instead, it is enforced entirely through civil lawsuits alleging discrimination, or any other mechanisms the ADA may allow.

7. COMMENT: "The Department's proposed amendment of N.J.A.C. 5:23-11.4(e)1 relates to parking requirements for completely inclusive playgrounds. The Law requirement is the creation of accessible parking, including the installation of a curb cut, IF ONLY on-street parking is available. The Department's proposed amendment appears to state that if street parking (existing/new) is provided (or available?) it must provide an accessible route to the playground and have a curb cut (where?). I'm reading the Law as stating if only onstreet parking is available, accessible parking (a parking lot or deck) with an accessible route to the facility (playground) needs to be constructed or be available (a curb cut or curb cuts may or may not be needed). So picture an existing park with an existing parking area (lot) that is installing a new playground. The existing parking lot may be able to be utilized (shared parking) for the playground provided it includes an accessible route to the playground. Currently by regulations, if a parking lot is provided for a building or facility (such as a playground?) isn't a specific number and type of handicap parking needed and an accessible route to the facility is needed and a curb cut(s) may be needed? Please clarify the following: Using a misquote from the Field of Dreams film, 'If you build it, they will come.' or Wayne's World 2, 'If you book them, they will come.', how is the number and type of parking spaces determined? I'm picturing the scene near the end in the Field of Dreams film with all the vehicles lined up. I also recall an existing playground (not a completely inclusive playground) that has just two barrier free parking spaces provided at the site (no other parking at site) that redirects patrons to street and lot parking over a block (>1000 feet) away. Since I am unable to recall any UCC parking code requirements specifically for playgrounds, how is the number and types of parking spaces required determined? In addition, how is occupant load of a playground determined? If the Department was able to develop some parking space criteria based on square footage of the playground or amount of playground equipment it would eliminate some guessing as to what amount is required and needed. It is recommended that the Department review the latest Institute of Traffic Engineers Parking

Generation Manual and the Shared Parking Manual and include in the regulations appropriate parking requirements for playgrounds. The Department may also want to require bicycle parking (rack) facilities. [For each bicycle space required, a stationary object shall be provided to which a user can secure both wheels and the frame of a bicycle with a user-provided 6-foot cable and lock. The stationary object may be either a freestanding bicycle rack or a wall-mounted bracket.]” [sic]

RESPONSE: As stated at N.J.A.C. 5:23-11.4(e)1, parking shall be provided in accordance with local municipal law. This means that the number of parking spaces for a playground is determined by the municipality in which the playground is located. This rulemaking ensures that street parking includes an accessible route and a curb cut and states that lot and deck parking must comply with Chapter 11, Accessibility, of the building subcode, N.J.A.C. 5:23-3.14. If a completely inclusive playground is constructed in an existing park with a parking lot or deck, the lot or deck must comply with Chapter 11. The Department respectfully disagrees that this section requires clarification at this time because these criteria are already established. Should it be brought to the Department’s attention that more accessible parking is necessary for completely inclusive playgrounds, these rules may be amended at that time. The use and installation of bicycle racks is outside the scope of the Uniform Construction Code (UCC) and is not considered for inclusion in this rulemaking.

8. COMMENT: The commenter elaborated on his concerns regarding parking in a separate comment document, as follows: “Accessible parking. The UCC IBC contains provisions that specifies types and number of barrier free spaces when the number of parking spaces is known. But how is the number of parking spaces for a playground determined? Is it based on square footage of the playground, or occupancy of the playground based on square footage per patron, or based on manufacturer playground equipment child capacity, or per governmental parking requirements, or a combination of factors? Without establishing the criteria, the number of required spaces can not be determined. But if two parking spaces or some other number are provided, the UCC IBC (and ADA) is clear as to what amount and type of accessible parking is required. Once the criteria is established, a determination as to whether completely inclusive playgrounds require more accessible parking can be made. (My current opinion is that the same amount and type of parking for a playground should be required for a completely inclusive playground. Exceptions should be included when providing on-site parking is not feasible.)” [sic]

RESPONSE: See the Response to Comment 7.

9. COMMENT: “The Department’s proposed amendment of N.J.A.C. 5:23-11.4(e)2 requiring all areas of the playground to be unitary surfacing as defined by the CPSC or ‘(CSPC)’ per the Department is not recommended. Unitary surfacing as defined by CPSC should be required ‘in the use zone’ and optional in other areas. A concrete walk way within the playground out of the use zone, a shade tree within the playground surrounded by engineered wood fiber, a grassed area within the playground, and other features should be allowed in completely inclusive playgrounds. Hopefully the Department’s intent was to require unitary surfacing per CPSC. The allowed use of unitary surfacing appears to be a ‘prior approval’ for all playgrounds not just completely inclusive playgrounds. Hopefully, the design professional would check whether unitary surfacing is allowed prior to selecting a site for a completely inclusive playground or a playground. N.J.A.C. 5:23-11.4(e)2i serves little purpose. {Unitary surface materials - ASTM Standard F1951, within use zone - ASTM F1951 and F1292, EWF (ADA compliant loose fill material), referenced standards of CPSC} [Note that NJAC 5:23-11.4(d)1 erroneously refers to 7.18(d)]” [sic]

RESPONSE: See the Response to Comment 2.

10. COMMENT: The commenter elaborated on his concerns regarding unitary surfacing in a separate comment document, as follows: “Unitary surfacing. The requirements of the CPSC and whether unitary surfacing is allowed appear to be applicable to all playgrounds. No additional requirements for completely inclusive playgrounds appears needed. [ASTM standards F1951, F1292, F2075, F2223, F2479, +]” [sic]

RESPONSE: See the Response to Comment 2.

11. COMMENT: “The Department’s proposed amendment of N.J.A.C. 5:23-11.4(e)3 that requires a family or assisted-use toilet room where

restroom facilities are provided needs clarification. If only one restroom facility (unisex) is provided is it required to be a family or assisted-use toilet room? Where restroom facilities are provided, what number of toilet facilities and fixtures per sex are required to be installed? (I am aware that assisted-use toilet rooms have specific fixture requirements.) As previously mentioned, is the number and type required based on occupant load or square footage of the playground or square footage of playground per child or some other factors? (I can’t recall if the plumbing code or building code addresses the number and type of toilet rooms and toilet fixtures required for playgrounds. What building group and plumbing group would playgrounds be considered in?) If I recall correctly, the UCC Plumbing Subcode requires separate facilities for each sex (with some exceptions) when toilet facilities are provided. So would a completely inclusive playground with restroom facilities need two family or assisted-use toilet rooms or three restrooms (male, female, family) to meet this provision? Or is there an exception that allows only a family restroom needs to be provided? Are drinking fountains also required? Changing tables? Are these restroom facilities to be within the playground area or can they be outside the playground area and at what distance?” [sic]

RESPONSE: The Department respectfully disagrees that N.J.A.C. 5:23-11.4(e)3 needs clarification. This section states that where restroom facilities are provided, at least one facility must be a family or assisted-use toilet room, installed in accordance with Section 1109.2.1.1 of the building subcode. Drinking fountains and changing tables are not addressed within this rulemaking and are outside the scope of this proposal.

12. COMMENT: The commenter elaborated on his concerns regarding restrooms in a separate comment document, as follows: “Restrooms. The UCC IBC and the UCC Plumbing Subcode contain provisions based on specific use of the building or facility. It appears ‘playgrounds’ is not specifically mentioned. So, just like parking, how is the number of toilet facilities and accessories (if provided or required) determined? Even if the use is established (say a group E or childcare or new playground category), how is the occupancy or number of patrons (male and female) determined? Again, once the criteria is established, the minimum number and types of water closets, urinals, lavatories, drinking fountains, changing tables, mirrors, and more can be established for a playground and a determination made as to whether completely inclusive playgrounds require more bathroom facilities and accessories. (My current opinion is that an assisted-use toilet room should be provided for all playgrounds when an aggregate of six or more male and female water closets is required or provided. Exceptions should be included when providing or requiring restrooms and accessories is not feasible.) [Note that if requirements for a drinking fountain is established, the installation of one drinking fountain may trigger (by ADA) that an additional drinking fountain or fountains (different heights) be provided.] Logically, it seems a bit crazy to spend tons of money on playground equipment and not provide restrooms. (Example - The installation of modular playground equipment costing \$125,000 for age range 5-12 years old with use zone of 50 feet by 50 feet and with a child capacity of 80. And no bathrooms provided.) [Note that the June 11, 2021 UCC Code Advisory meeting minutes, C.Old Business #6 indicates the Jake’s Law proposed amendments were not referred to the Plumbing Subcode Committee and the assisted-use toilet requirement was added by the BF Subcode Committee and the UCC Board unanimously approved (with the Plumbing Subcode chairman present) the draft as amended.]” [sic]

RESPONSE: See the Response to Comment 11. In addition, the commenter notes that this proposal was not referred to the plumbing subcode committee during the Code Advisory Board meetings. This is because the Board felt that the requirement at N.J.A.C. 5:23-11.4(e)3 was appropriate as written and did not necessitate further review by the subcode committee.

13. COMMENT: “The Department’s proposed amendment of N.J.A.C. 5:23-11.4(e)4 that requires a minimum of 20 percent of the square footage of unitary surface and equipment of the playground to be shaded needs clarification. Is the requirement at least 20 percent of unitary surface and at least 20 percent of equipment? Or since unitary surfacing is required in all areas of the playground, does shading at least 20 percent of the unitary surface suffice? Considering that metal playground equipment (and other metal objects - benches, and other site amenities) can buildup heat on its

surface when exposed to sunlight if not shaded, why allow 20 percent (min/max to meet provision) shaded area to be acceptable if a large quantity of metal equipment and site accessories are provided? If the play structures were utilized as a means for providing the at least 20 percent shading requirement with no other shading provided would that be acceptable even though not logical? The statement that 'priority may be given to areas that have seating or tables' provides no enforceable provisions and should be deleted. To state that 'a minimum of 34 percent of areas within the playground (or that serve the playground) that have seating or tables shall be provided with shading' seems more logical and enforceable. (I just picked 'a minimum of 34 percent' at random. Probably just as good and justifiable as the '20 percent' expressed in the Law especially if the benches and tables are not considered equipment of the playground.)" [sic]

RESPONSE: The requirement is for a minimum of 20 percent of the completely inclusive playground to be shaded. The Department respectfully disagrees that this section needs clarification. The 20 percent threshold was determined within P.L. 2018, c. 104 to appropriately meet the needs of playground users. The Department does not have the authority to supersede the percentage determined by the Law with a different, arbitrary percentage.

The Department also respectfully disagrees that the section regarding priority shading for tables should be deleted. Section 3 of P.L. 2018, c. 104 required the Department to "invite and receive recommendations regarding the adoption of rules...from organizations, playground equipment manufacturers, playground safety consultants, and persons with disabilities with a demonstrated expertise in the design and construction of completely inclusive playgrounds or with a demonstrated expertise in the implementation of accessibility standards," and "adopt the recommendations unless...the recommendations are inconsistent with the intent and purpose of P.L. 2018, c. 104...or are otherwise unfeasible." The provision for priority shading was recommended by one of the organizations that submitted recommendations, and it aligns with the intent and purpose of the Law. There is no basis for its deletion, and it will not be unfeasible to allow designers to prioritize shading for tables, where provided.

14. COMMENT: The commenter elaborated on his concerns regarding shading requirements in a separate comment document, as follows: "Shading requirements. The CPSC has shading considerations but does not specify a specific percent as being required. Jake's Law does specify a minimum of 20 percent of the square footage of unitary surface and equipment of the playground to be shaded with no maximum stated. The Department could require all new playgrounds to meet this 20 percent shading requirement. But by providing only the specified 20 percent shading in a playground or completely inclusive playground that does not mean a shaded area is available for all patrons. In addition, shading of fixed benches and other site amenities and support features inside and outside the playground area should be addressed. Understanding that the mix of sun and shade is vitally important, requiring at least 50 percent of the playground should be exposed to sunlight at any time during the morning and afternoon when the playground will be used is recommended to be included in the regulations. From a technical stand point, there is no specific time included in the proposed amendments as when measurement of the percent of shading is to be made. [Provide shaded areas in the playground which shall shade at least X% of the playground at noon on the summer solstice.] Aside from requiring a hat, wearing protective clothing, and using sunscreen, the passive protection of shading from the sun's damaging rays should be required for all playgrounds not just completely inclusive playgrounds." [sic]

RESPONSE: See the Response to Comment 13. The Department respectfully disagrees that further clarification is needed at this time.

15. COMMENT: "The Department's proposed amendment of N.J.A.C. 5:23-11.4(e)5 that requires that fencing (traditional fencing materials or natural barriers) shall be provided around the playground needs clarification. Would providing a three feet in height wooden (non-CCA treated) picket fence with V spaces at the top around the playground meet this requirement? Would installation of a 'security fence' of at least 12 feet in height with three strands of barbed wire on an outrigger meet this requirement? How many exits from the fenced in playground need to exist? Do gates need to be equipped with self-closing and positive self-

latching closure mechanisms? Would a solid six feet in height fence that prevents observation of the children by caretakers on the outside of the playground be acceptable? The Department should consider what barriers are required and allowed for swimming pools and the fencing requirement that the Department proposed for facilities housing individuals with Alzheimer's disease and related disorders to prevent wandering from the facility. (I can't recall the specific regulations.) It is recommended that the Department review the latest ASTM Standard F 2049, Standard Guide for Fences/Barriers for Public, Commercial, and Multi-family Residential use Outdoor Play Areas (referenced standard of CPSC) and appropriately revise the proposed requirements as needed." [sic]

RESPONSE: The Department respectfully disagrees that further clarification of this section is needed. Allowing natural fencing such as shrubs was a recommendation provided to the Department pursuant to P.L. 2018, c. 104, and was not determined to be unfeasible or inconsistent with the intent and purpose of the Law.

It is not anticipated that any playground designer would plan to utilize barbed wire or tall, solid fencing surrounding the playground. Should this be an issue that is reported to the Department, the rules can be amended in the future to ensure that this provision is not being inappropriately utilized. Fencing that meets ASTM F2049 would be appropriate, since, as noted by the commenter, it is a referenced standard of CPSC, which is a requirement for all completely inclusive playgrounds pursuant to P.L. 2018, c. 104.

The commenter's reference to dementia care homes is outside the intent and scope of this rulemaking; the oversight for these facilities is the responsibility of the Department of Health, and there is no basis for the fencing requirements for completely inclusive playgrounds to mirror those required in dementia care homes.

16. COMMENT: The commenter elaborated on his concerns regarding fencing in a separate comment document, as follows: "Fencing. As mentioned in my previously submitted comments, consider the 10 or less pages of ASTM Standard F2049 referenced in CPSC and it's applicability to all playgrounds. [Perimeter containment. Vehicle barriers.] In addition to caretaker supervision, all playgrounds should be fenced or otherwise enclosed or protected from traffic and other hazards in accordance with ASTM Standard F2049. [The Department previously was involved with the licensure of dementia care homes as a subset of rooming and boarding house regulations - now with Health (transferred in 2016?) - review N.J.A.C. 8:37-7.10(a)2. These are the requirements that I was unable to recall.]"

RESPONSE: See the Response to Comment 15.

17. COMMENT: "The Department's proposed amendment of N.J.A.C. 5:23-11.4(e)6 that requires play components that address the physical, sensory, cognitive, social, emotional, imaginative, and communication needs shall be provided needs clarification. What play equipment does not supply one or more of these needs? How are the 'needs' of individuals using the playground determined? Please explain what is meant by 'the applicability of these features shall be determined by the owner of the facility pursuant to the manufacturer's instructions'. In general, all play equipment should be constructed, installed, and made available to the intended users in such a manner that meets CPSC and ASTM standards, as warranted by the manufacturer's recommendations. (ASTM Standard F1487 Standard Consumer Safety Performance Specification for Playground Equipment for Public Use a referenced standard of CPSC) Also play equipment should be identified as age-appropriate (usually done by a manufacturer's label on the product package). Is it possible that the Department could establish a specific amount or percentage of playground equipment to be identified in a completely inclusive playground that provides opportunities for development of physical, sensory, cognitive, social, emotional, imaginative, and communication skills?" [sic]

RESPONSE: The purpose of the completely inclusive playground is to ensure that all of the equipment addresses the multitude of sensory needs of those using the playground equipment. The Department respectfully declines to establish percentages for each in the interest of flexibility from playground to playground in providing equipment to address differing needs. This was agreed upon by those who contributed their recommendations pursuant to P.L. 2018, c. 104. The statement "the applicability of these features shall be determined by the owner of the facility pursuant to the manufacturer's instructions" means that the owner

is aware of the sensory function of this equipment pursuant to the manufacturer's instructions. The commenter is correct that the equipment utilized must meet the CPSC standards. The Department is confident that the regulated industry is aware of the multitude of equipment that exists to meet the needs of all playground users. Finally, because these are completely inclusive playgrounds, the determination of needs relates to any physical or other disabilities of the anticipated users.

18. COMMENT: The commenter elaborated on his concerns regarding play components in a separate comment document, as follows: "Playground equipment. This appears to be the key factor in being deemed a completely inclusive playground. Aside from meeting ASTM Standard F1487, CPSC, and percentages of ADA and UCC, what playground equipment is required to be included to get the completely inclusive playground designation? At a minimum, should completely inclusive playgrounds have at least one piece of equipment that is accessible to all and stimulates the following sensory systems: Auditory (the sense of hearing - musical instruments, talk tubes), Visual (the sense of sight - brightly colored play panels), Tactile (the sense of touch - sand play, raised surface play panels), Vestibular (the sense of balance - swings, balancing equipment and activities), and Proprioceptive (the senses of position and movement of our limbs and trunk-climbing walls, nets and ladders). Plants and other items in the area could provide appeal to the sense of smell. The inclusion of this type of equipment would also address social and intellectual development. (By the Law and proposed amendments - play components that address the physical, sensory, cognitive, social, emotional, imaginative, and communication needs are required to be provided.)" [sic]

RESPONSE: See the Response to Comment 17.

19. COMMENT: "The Department's proposed amendment of N.J.A.C. 5:23-11.4(e)7 that quiet areas shall be provided and identified by the playground manager needs clarification. What is the meaning of 'identified' and why must it be identified by the playground manager and not the designer? By 'identified' is the intent that signage be provided? A definition or explanation of a 'quiet play area' may be beneficial. A area provided for a child or children to escape the commotion without feeling isolated. Secluded areas in the playground but still within sightline. An area providing an opportunity to calm down." [sic]

RESPONSE: There does not necessarily need to be signage for the quiet area to be determined; it is up to the manager how the quiet area is to be identified and maintained. The reason this responsibility was given to the playground manager is because the quiet area may need to be changed over time depending on the use of the playground, and the manager will be able to render that determination. In addition, it is not anticipated that there will be any confusion as to what constitutes a quiet play area. The Department respectfully disagrees that further clarification is needed.

20. COMMENT: The commenter elaborated on his concerns regarding quiet areas in a separate comment document, as follows: "Quiet areas. Quiet areas should be provided in all playgrounds. The question becomes how much of an area is required and for how many children? Hopefully the area or areas are not time-out chairs in the corner of the fence. Recommendation-A secluded area or areas in the playground, which are still within the sightline of caretakers, shall be included as part of the design and established by the manager as an area or areas where children may retreat to play autonomously and recalibrate. For every 50 children or portion thereof, a total quiet area of at least XYZ square feet shall be provided for children who become overwhelmed in a busy playground. (Again, how is the number of children in the playground determined? Minimum occupancy based on 75 square feet per child?) This area may be part of the playground equipment, such as the area under a slide, or a separate area. All designed and established areas shall be added together to calculate the total quiet area." [sic]

RESPONSE: See Response to Comment 19. The Department respectfully disagrees that further clarification is needed. The Department recognizes the need for flexibility in completely inclusive playgrounds, and as such, there is no precise equation that will dictate the appropriate area for quiet play across all completely inclusive playgrounds. In addition, it is not anticipated that the designer or manager of a completely inclusive playground would allow for the quiet area to be a "time out chair." If this issue is brought to the Department's attention in the future,

the rules can be amended to ensure the rules are not being inappropriately utilized. The intent and purpose of this rulemaking is to provide completely inclusive play areas that are usable and welcoming to all children as well as ensuring flexibility in their design.

21. COMMENT: "Since the Law states that 'the rules and regulations shall also include, but shall not be limited to the following', the Department may also want to consider requiring additional items. As noted above, bicycle racks and other plumbing fixtures (even consider needs of animals and service animals). And 'signage' that identifies the age group that the playground equipment and playground is designed to be used by, rules of the playground including required adult supervision, and cautions that metal surfaces may be hot and cause burns. The Law also appears to allow the Department to prohibit the installation of specific items. What items should not be in a completely inclusive playground?" [sic]

RESPONSE: The Department respectfully disagrees that further items are necessary at this time. As noted in the Response to Comment 7, bicycle racks are outside the intent and scope of the UCC and are not being considered at this time, and plumbing fixtures are addressed in response to Comment 11. Facilities for service animals, and any other animals as noted by the commenter, are also outside the intent and scope of the UCC and are not being considered at this time.

In addition, the signage the commenter refers to is outside the scope of the UCC and is not being considered at this time.

The Department also does not see it appropriate to limit the age groups that may utilize completely inclusive playground, since children of all ages have differing abilities that may impact how they interact with play equipment.

Further, the Department does not feel that there is any need to create an exhaustive list of items prohibited in a completely inclusive playground. If there should be any problematic features that are being utilized throughout a multitude of completely inclusive playgrounds upon adoption of this rulemaking, this may be addressed through future rulemaking.

22. COMMENT: The commenter elaborated on his concerns regarding additional elements in a separate comment document, as follows: "Routes of access. The requirements of the ADA appear to address this for all playgrounds and related facilities. No additional requirements for completely inclusive playgrounds appears needed. Current provisions need review to confirm compliance with ADA and ASTM Standard F1951 referenced in CPSC. [# of entrances, # of exits, gates, other items may need to be established.]

Ramps and transfer points. Review ADA requirements and determine if more is needed to be provided in completely inclusive playgrounds.

Components Percentages. Review ADA requirements and determine if more is needed to be provided in completely inclusive playgrounds. Age separation and age group. Required by ADA and is applicable to all playgrounds.

Other items. Signage. Equipment not recommended. Equipment not covered by protective surfacing recommendations. Service animal provisions. Requirements (ADA) to upgrade existing playgrounds when alterations or equipment is replaced. (In 1999 the Law required the Department to promulgate requirements for all playgrounds and upgrading of surfacing in five years and eight years for all other elements.) More." [sic]

RESPONSE: The Department respectfully disagrees that further amendments are needed. Ramps, transfer points, and component percentages are appropriately addressed, because completely inclusive playgrounds must comply with the ADA and CPSC requirements. As stated in the Response to Comment 21, the Department does not find it necessary to require age restrictions for play equipment, signage, or service animal provisions.

23. COMMENT: "Logically, should all playgrounds have accessible parking facilities if parking is provided, have unitary surfacing per CPSC for accessibility and fall protection, have accessible restroom facilities if restroom facilities are provided, have shading for protection from too much sun, have fencing or barriers to limit wandering and elopement, have play equipment specific to the age group and separated by age groups, and a rest area or quiet area? The above appears required by the current regulations. So what are the key elements that turns a playground

into a completely inclusive playground? Based on the proposed amendments it appears the inclusion of a family or assisted-use toilet room, a specific amount of elevated play equipment/elements (as mentioned above an ADA but not a UCC requirement) and inclusive play equipment which has play components that address the physical, sensory, cognitive, social, emotional, imaginative, and communication needs of the patrons is all that is required. If accessible BF restroom facilities (male, female, unisex) are provided, not having a family or assisted-use bathroom would not be deal breaker to me especially if existing restroom facilities are to serve the playground. As previously mentioned, the percentages in N.J.A.C. 5:23-7.31 (along with other referenced sections, such as N.J.A.C. 5:23-7.19) need review and updating. As example - Does the Department want to continue to allow in completely inclusive playgrounds and playgrounds that only five percent of benches shall be on an accessible route of travel? Or is this applicable only to picnic areas and there are no percentage requirements for benches or picnic tables in playgrounds?" [sic]

RESPONSE: All of the requirements detailed within N.J.A.C. 5:23-11.4(e) are required for a playground to be considered a completely inclusive playground. This includes parking, more extensive unitary surfacing, family or assisted-use toilet rooms, shade, more inclusive play equipment, and required quiet play areas.

The Department recognizes that the absence of a family or assisted-use toilet room may not be a deal-breaker for some patrons, but these toilet rooms better suit the needs of many children who are wheelchair users or who otherwise need assistance from a caregiver of a different gender. This rulemaking seeks to ensure that completely inclusive playgrounds meet the varying needs of its patrons.

The Department respectfully disagrees that further review of Subchapter 7 is needed at this time. The current percentages are appropriate as written and appropriately suit the needs of patrons.

24. COMMENT: "It is recommended that the Department not adopt the proposed amendments until these issues are addressed. The Department's consideration of the above is appreciated." [sic]

RESPONSE: The Department thanks the commenter for his comments; all have been duly considered and responded to.

25. COMMENT: "I am in full support of all-inclusive playgrounds being provided." [sic]

RESPONSE: The Department thanks the commenter for his support for completely inclusive playgrounds being provided throughout the State.

26. COMMENT: "It appears that in my quick review of the Department's proposed amendments I missed that the Department is changing the playing field. To explain further: Playgrounds (recreation) currently are not subject to the accessibility regulations of Chapter 11 of the State Uniform Construction Code's Building Subcode (UCC IBC). This is stated in N.J.A.C. 5:23-7.1, 'The accessibility regulations, other than recreation, shall be found in Chapter 11 of the building subcode, as amended at N.J.A.C. 5:23-3.14(b).' But, since I recognize that the Department did not appropriately amend N.J.A.C. 5:23-7, the Barrier Free Subcode (BF), when previously amendments were adopted, corrective action is needed. (Probably should also amend N.J.A.C. 5:23-7.1 and other sections.) But the Department's proposed amendments, as expressed in my earlier comments, do not address the non-compliance with the 2010 Americans with Disabilities Act (ADA). Since the UCC IBC Chapter 11 requirements are not in compliance with or do not contain all the requirements contained in the ADA, it is recommended that the Department amend N.J.A.C. 5:23-11.1 to include compliance with the ADA. Especially since playground equipment and facilities constructed or altered on or after March 15, 2012, must comply with the ADA. [Again, it is recommended that the Department review 2010 ADA Chapter 2, Section 240 (Play Areas) and Chapter 10, Section 1008 (Play Areas). It appears the Department's proposed N.J.A.C. 5:23-7.31(c) is applicable to all playgrounds.] The UCC IBC Chapter 11 requirements are no longer equivalent to ADA requirements. Why is the Department hesitant to include ADA requirements and remain reliant on non-ADA compliant UCC IBC provisions?" [sic]

RESPONSE: The regulations for accessible buildings are contained within Chapter 11, Accessibility, of the Building Subcode (International Building Code/2018), N.J.A.C. 5:23-3.14. The commenter's

interpretation that barrier free recreation requirements preclude the application of Chapter 11 of the Building Subcode is incorrect. Compliance with the accessibility standards have always been required; these standards were previously codified within Subchapter 7. The Department respectfully disagrees that further revision is needed; these requirements are not being misused or misunderstood throughout the State.

In addition, as noted in the Response to Comment 6, the ADA is a Federal Law that applies to new construction and requires that building owners improve the accessibility to their existing buildings, though it does not require specific improvements. Neither the Department nor local enforcing agencies are responsible for the enforcement of the ADA. Instead, it is enforced entirely through civil lawsuits alleging discrimination. Should there be a ruling in favor of the person alleging discrimination, the owner of the playground would have to undertake work to improve accessibility to address the specific shortcomings present. Because playgrounds are required to meet ADA standards, and because those standards are not enforced by local enforcing agencies, the Department does not find it necessary to reiterate those standards within the UCC.

Lastly, the proposed amendment to N.J.A.C. 5:23-7.31(c) is written in accordance with P.L. 2018, c. 104, Section 2.b.(1)(e).

27. COMMENT: "As implied or expressed by my previous comments, all new playgrounds should be in conformance with the ADA, U.S. Consumer Products Safety Commission's Handbook for Public Playground Safety (CPSC), UCC Barrier Free Subcode (BF), and the UCC Playground Safety Subcode (PSS) as a minimum. If one contains more stringent requirements than another, the more stringent shall be followed. It is recommended that the Department review the provisions of the ADA and CPSC and appropriately add percentages if needed to further expand on what requirements need to be met for all playgrounds. After which, the Department should appropriately supplement or modify these requirements for playgrounds to be deemed completely inclusive playgrounds. As previously expressed, the Department's proposed amendments, in my opinion, just require a playground to have specific equipment and provide an assisted-use toilet room in order to be deemed a completely inclusive playground." [sic]

RESPONSE: The Department respectfully disagrees that further review of these standards is necessary. As noted by the commenter, they are required for all newly constructed playgrounds. This rulemaking establishes additional provisions for completely inclusive playgrounds which meet the varying needs of patrons while still maintaining flexibility in design.

28. COMMENT: "Of the playgrounds (ones that are supposedly all inclusive playgrounds) built in N.J. within the last decade, how many are in total compliance with the Department's proposed regulations? What is the square footage area of each of these playgrounds? How many parking spaces are provided for each of these playgrounds? What is the square footage percentage of shading provided to unitary surface and equipment? What is the total square footage quiet area provided? What fencing and barriers are provided to enclose the playground? What quantity and type of bathroom facilities and accessories are provided? What quantity and types of site amenities are provided? What quantity and type of play components are provided that address 1) physical 2) sensory 3) cognitive 4) social 5) emotional 6) imaginative and 7) communication needs? What is the manufacturer child capacity of each of the play equipment provided and what is the total manufacturer child capacity provided for each playground?"

Of the playgrounds (other than ones that are supposedly all inclusive playgrounds) built in the last decade, what needs to provided or altered to be in total compliance with the Department's proposed regulations?" [sic]

RESPONSE: Because these are a new kind of playground, no playgrounds in the State are currently considered completely inclusive playgrounds in accordance with these regulations. Any existing playground could make modifications in accordance with N.J.A.C. 5:23-11.4, but this rule is intended to define the requirements for completely inclusive playgrounds in order to allow for Green Acres funding for newly constructed playgrounds. As such, the Department does not see it necessary to conduct research into the current accessibility of all playgrounds built in the last decade.

29. COMMENT: "Having the above data on existing playgrounds would provide a base line of where N.J. is at this time. But it would be for naught. Because these completely inclusive playground regulations are not applicable to all playgrounds and is just a new OPTIONAL subset of standards in playground construction, design, and operation that if complied with results in the award of being deemed a 'completely inclusive playground'. I believe this 'option' has existed for some time (except for the award) and playground designers may choose to build completely inclusive playgrounds, or choose to build all inclusive playgrounds, or choose to build just code (UCC, ADA, CPSC, BF, +) compliant playgrounds. Even a code compliant playground will result in some inclusiveness, but it may not be 100% such as when the proposed assisted-use toilet room is not provided. So this playground can not be deemed a completely inclusive playground, although it includes everything but A, B and C, it fails to receive the award. Such a disappointment. In my previous comments I expressed (and appears to be part of the Law) that the option of building a completely inclusive playground is not applicable when constitutionally dedicated money is provided to counties and the Law ensures at least one completely inclusive playground is operated and maintained by each county per the proposed regulations." [sic]

RESPONSE: The commenter is correct that these regulations only address new playgrounds built after the effective date of these regulations. The commenter is also correct that at any time in the past, a playground that included entirely accessible components could have been built. P.L. 2018, c. 104 established baseline requirements for completely inclusive playgrounds and allows for funding for counties that apply to receive monies for the construction of completely inclusive playgrounds. The commenter is correct that a playground that meets all the requirements of the CPSC will not be considered a completely inclusive playground unless all additional features included at N.J.A.C. 5:23-11.4(e) and established by P.L. 2018, c. 104 are met, as well.

30. COMMENT: "Because the Department does not enforce playground provisions and assigns this to others, there is minimum, if any, impact to the Department with these proposed regulations. As stated in the UCC Code Advisory June 11, 2021 meeting minutes C. Old Business #6 Completely Inclusive Playgrounds (Jake's Law) "The Board recognized that this matter is outside the scope of the Uniform Construction Code, but worth noting." It appears the Department does not have a dog in the hunt. But if it does, that dog won't hunt."

In another comment, the commenter stated, "When it comes down to amending UCC accessible recreation regulations or any regulations; when assigning responsibility of the task to someone or an agency that does not have a dog in the hunt, one should not be surprised with the end result. [Note: I do not have a dog in this hunt.]" [sic]

RESPONSE: The Department respectfully disagrees that there is no impact to the Department with these proposed regulations. The Department oversees the enforcement of the playground safety subcode and barrier free recreation subcode for playgrounds throughout the State and is involved in the appeals process when any party is aggrieved by any decision made by a recreation facility manager or owner pursuant to N.J.A.C. 5:23-2.38(b). The Department recognizes that the day-to-day oversight is most appropriately left to the playground manager rather than the local enforcing agency, which is responsible for ensuring that playgrounds are appropriately constructed. This Law is relevant to the construction of playgrounds, and the commenter's quote from the Code Advisory Board misconstrues the purpose of that discussion.

31. COMMENT: "With that in mind, it is recommended that to be considered a completely inclusive playground for two to five year olds that the playground be required to be designed for at least 75 children and to be considered a completely inclusive playground for five to twelve year olds that the playground be required to be designed for at least 150 children. In addition, increase the percentages of N.J.A.C. 5:23-7.31(a) and (b) required for completely inclusive playgrounds. And include all other proposed and recommended provisions for others to enforce. How many county parks (playground) managers did the Department meet with, and obtain feedback from, prior to issuance of these proposed amendments? Is there anyone in the Department that can explain N.J.A.C. 5:23-7.19(b)2 as to what a challenge level 1 accessible route is? Or what a challenge level 2 or 3 accessible route is? What is considered a challenge

level 1 accessible route? What is the meaning of 'shall meet the criteria for an accessible route in the technical standard adopted within Chapter 11 of the building subcode'? What technical standard is this referring to and where are these provisions within that technical standard? Do these provisions even exist at this time? The Department may have to go back in history two decades to determine the answers." [sic]

RESPONSE: The Department respectfully disagrees that the changes requested above are necessary. There is no basis for the design of completely inclusive playgrounds to be based upon different numbers of children for different ages. The challenge levels cited at N.J.A.C. 5:23-7.19 utilize the technical standard for accessible routes, in this case, Chapter 4 of ICC A117.1-2009, in addition to the conditions listed within the Barrier Free Subcode for recreation. The challenge levels expand beyond the sloping requirements provided in A117.1. By way of example, challenge level 1 accessible routes allow for ICC A117.1-2009 to be exceeded per the conditions listed at N.J.A.C. 5:23-7.19(b)2i. through iv. Challenge levels 2 and 3 further expand how an accessible route can be made and acknowledge specific slopes as the criteria for the challenge.

Chapter 11 of the Building Subcode lists the requirements for recreational facilities within Section 1110 and within Chapter 11 of ICC A117.1-2009.

Letters inviting recommendations were sent to 13 different organizations involved with completely inclusive playgrounds; recommendations were received from six parties, including the New Jersey Recreation and Park Association, and all recommendations were duly considered in the rulemaking process.

32. COMMENT: "Hopefully, my comments are beneficial in the Department's development of appropriate regulations (and modification of existing) applicable to both playgrounds and completely inclusive playgrounds and are reasonable and feasible for N.J. counties to meet and enforce. [And update the UCC Barrier Free Subcode as needed to be in compliance with the 2010 ADA] The Department's consideration is appreciated. Again, I am in full support of all-inclusive playgrounds being provided." [sic]

RESPONSE: The Department thanks the commenter for his support.

33. COMMENT: "In addition, I recall that approximately one year ago I expressed concerns that conflicts continue to exist with the requirements of the Barrier Free Recreation Standards (BF), the Playground Safety Subcode (PSS), and the Building Subcode section 1110 (UCC-IBC); and recommended that Department corrective action be taken. In addition, I recall expressing similar concerns over three years ago. It is recommended that the Department review the September 3, 2019, New Jersey Register (Cite 51 N.J.R. 1407), Comment #34 and Response (Cite 51 N.J.R. 1408). [Rule Adoption UCC Adopted Subcodes] I am now expressing the need for the Department to address the conflicts with the BF, PSS, UCC-IBC, and 2010 ADA Standards. Especially since the 2010 ADA Standards need to be met (Federal requirement since March 15, 2012). Isn't it time for the Department to address the "paper problem"? Or is it still the Department's position that these conflicts are not causing problems in the field at this time and no complaints or questions from designers or playground/recreation professionals regarding the interaction of these rules, both State and Federal, have been received and therefore let the conflicts remain? If the Department and local code enforcement officials enforced the accessible recreation requirements of the UCC, and not the facility manager, would the "paper problem" get resolved or would resolution still be contingent on the receiving of complaints or questions or law suits?" [sic]

RESPONSE: As noted in the Response to Comment 6, neither the Department nor local enforcing agencies are responsible for the enforcement of the ADA.

#### Federal Standards Statement

A Federal standards analysis is not required for the adopted amendments because the amendments are not being adopted in order to implement, comply with, or participate in, any program established under Federal law or under a State law that incorporates or refers to Federal law, standards, or requirements.

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

SUBCHAPTER 7. BARRIER FREE SUBCODE

5:23-7.19 Recreation: route of travel

- (a) (No change.)
- (b) An accessible route of travel shall meet the following criteria:
  1. An accessible route of travel that connects an accessible site access point and support facilities, accessible recreation facilities, and accessible recreation equipment shall meet all of the criteria for an accessible route in the technical standard adopted within Chapter 11 of the building subcode (N.J.A.C. 5:23-3.14), except that the following are also acceptable surfacing materials: flat surfaced pavers on concrete, flat surfaced pavers on sand, and wood decking. Crushed stone laid over a compacted subgrade and bound with sufficient cement to provide a non-shifting, firm surface shall also be acceptable.
  2. A challenge level I accessible route may connect additional site access points, if provided, and support facilities, recreation equipment, and recreation facilities. A challenge level I accessible route shall meet the criteria for an accessible route in the technical standard adopted within Chapter 11 of the building subcode (N.J.A.C. 5:23-3.14), except as follows:

- i.-v. (No change.)
- (c)-(e) (No change.)

5:23-7.31 Recreation: equipment

- (a) Five percent of all picnic tables, benches, fireplaces, and grills shall be on an accessible route of travel.
  1. (No change.)
  - (b) Within each play area on a site:
    1. At least 25 percent of the single function play equipment shall be of a type identified by its manufacturer as accessible to and usable by both disabled and non-disabled persons; and
    2. At least 25 percent of the play activities of all multi-functional play equipment within each play area on a site shall be of a type identified by its manufacturer as accessible to and usable by both disabled and non-disabled persons.
      - i. Access onto the multi-functional play equipment may include, but is not limited to, the following:
        - (1) A ramp that complies with the technical standard adopted within Chapter 11 of the building subcode (N.J.A.C. 5:23-3.14) and that provides a landing at the top and at the bottom that has a minimum width of five feet by five feet;
        - Recodify existing ii. and iii. as (2) and (3) (No change in text.)
        - ii. (No change in text.)
      - (c) In addition to (b) above, completely inclusive playgrounds shall have elevated play equipment/elements in which at least 50 percent is accessible.
        1. Play elements include single-function play equipment, multi-function equipment, changes in topographical elevations that function as elevated play elements, and elements that otherwise meet the standards required by the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.
- (d)-(e) (No change.)

SUBCHAPTER 11. PLAYGROUND SAFETY SUBCODE

5:23-11.2 Definitions

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

“Completely inclusive playground” shall mean a playground designated for public use for children two to five years of age or five to 12 years of age, with an accessible playground surface, a playground surface inspection, and maintenance schedule with the standards detailed in the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq., and designed in accordance with the rules adopted pursuant to subsection b. of section 2 of P.L. 1999, c. 50 (N.J.S.A. 52:27D-123.10).`

“Playground” shall mean an improved area designed, equipped, and set aside for play of six or more children, which is not intended for use as an athletic playing field or athletic court, and shall include any play

equipment, surfacing, fencing, signs, internal pathways, internal land forms, vegetation, and related structures.

5:23-11.4 Compliance schedule

- (a)-(c) (No change.)
- (d) All construction or alteration of playgrounds, playground equipment and surfacing that are subject to the Playground Safety Subcode shall comply with the applicable provisions of the Barrier-Free Subcode (N.J.A.C. 5:23-7).
  1. In accordance with N.J.A.C. 5:23-7.19(d) and ICC/ANSI A117.1, Sections 302 and 303, surfaces of all routes and spaces required to be accessible shall be stable, firm, and slip-resistant. Sand and gravel shall therefore not be used as surfacing materials when new equipment is being installed, or a new safety surface is being put in place, and the barrier-free subcode is applicable.
  - (e) In addition to (c) and (d) above, completely inclusive playgrounds shall include the following:
    1. Parking shall be provided in accordance with local municipal law.
      - i. Street parking installation shall be in conformance with the local municipal ordinance, including the accessible route, which shall include the installation of a curb cut.
      - ii. Lot and deck parking shall be accessible pursuant to Chapter 11 of the building subcode;
    2. Unitary surfacing shall be provided in \*[all areas of the playground.]\* \***areas surrounding the playground equipment and on pathways to playground areas that are not connected.**\*
      - i. Prior to selecting a site for construction of a completely inclusive playground, the applicant shall ensure that local, county, and State laws allow for the use of unitary surfacing in the desired area;
      3. Where restroom facilities are provided, at least one facility shall be a family or assisted-use toilet room installed in accordance with Section 1109.2.1.1 of the building subcode;
      4. Shading shall be provided. A minimum of 20 percent of the square footage of unitary surface and equipment of the playground shall be shaded. Priority may be given to areas that have seating or tables.
        - i. Shading may be provided by natural or man-made means;
      5. Fencing shall be provided around the playground.
        - i. Fencing material may include, but is not limited to, traditional fencing materials or natural barriers, such as hedges;
      6. Play components that address the physical, sensory, cognitive, social, emotional, imaginative, and communication needs shall be provided. The applicability of these features shall be determined by the owner of the facility pursuant to the manufacturer’s instructions; and
      7. Quiet play areas shall be provided.
        - i. The playground manager shall identify the quiet play areas.

(a)

**DIVISION OF CODES AND STANDARDS**  
**Notice of Readoption**  
**Continuing Care Retirement Community Rules**  
**Readoption: N.J.A.C. 5:19**

Authority: N.J.S.A. 52:27D-330.

Authorized By: Lt. Governor Sheila Y. Oliver, Commissioner,  
 Department of Community Affairs.

Effective Date: March 8, 2022.

New Expiration Date: March 8, 2029.

**Take notice** that, pursuant to N.J.S.A. 52:14B-5.1, the rules at N.J.A.C. 5:19 were scheduled to expire on August 5, 2022. These rules are intended to enable the Department of Community Affairs to implement the Continuing Care Retirement Community Regulation and Financial Disclosure Act, N.J.S.A. 52:27D-330 et seq., and enable affected providers to fully comply with the requirements in the Act.

This chapter contains 13 Subchapters. Subchapter 1 contains general provisions and definitions. Subchapters 2 and 3 detail certification requirements and applying for certification. Subchapter 4 contains requirements for disclosure statements. Subchapter 5 establishes the rules