

## 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 provided, rounded to the next higher whole number, but not less than one, 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

related to advertising for Continuing Care Retirement Communities. Subchapter 6 contains the requirements for contracts and Subchapter 7 details requirements for financial responsibilities. Subchapter 8 contains requirements for nonbinding reservation agreements and Subchapter 9 includes requirements for the notice of rights. Subchapters 10 and 11 provide the requirements for cancellation of continuing care agreements and transfer of residents, respectively. Subchapter 12 contains requirements for notices. Subchapter 13 contains the requirements for the administration of the regulations.

The Department of Community Affairs has reviewed the rules and has determined that they should be readopted without change. The rules are necessary, reasonable, and proper for the purpose for which they were originally promulgated. Therefore, pursuant to P.L. 2011, c. 45, these rules are readopted and shall continue in effect for a seven-year period.

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Education for Homeless Children and Students in State Facilities

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

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

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

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

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

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

Effective Dates: March 4, 2022, Readoption;  
April 4, 2022, Amendments and New Rules.

Expiration Date: March 4, 2029.

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

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

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

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

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

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

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

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

The commenter acknowledged that youth in detention alternatives arguably fit the definition of homelessness at N.J.A.C. 6A:17-2.2(a)1, which includes all children and youth residing in a "publicly or privately operated shelter designed to provide temporary living accommodations." The commenter requested that the Department amend N.J.A.C. 6A:17-2.2(a) to expressly include youth in detention alternatives—or propose a separate subchapter for this population—to provide coordinated support for students placed out of the home by the juvenile justice system and to ensure school district responsibility for efficient and equitable education of the youth. The commenter stated that providing clear procedures for immediate enrollment, transportation of students, exchange of records, payment of tuition, and coordination through a designated "point of contact" would further operationalize New Jersey's requirement to provide a thorough and efficient education to all students with little added expenditures because of the existing framework at N.J.A.C. 6A:17. (2)

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

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

RESPONSE: "Youth" and "unaccompanied youth" are not synonymous terms. While the McKinney-Vento Homeless Assistance Act (Act) does not provide a definition for "youth," the term is used throughout the Act in conjunction with "child" to indicate persons to whom the law applies for the purposes of education. The Act's rules define "unaccompanied youth" as "a homeless child or youth not in the