

Executive Order No. 103 Notices

Education

Commissioner Of Education

Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103 (2020)

COVID-19 State of Emergency

Operation of School Districts

N.J.A.C. 6A:32-7.1 and 7.5

Authorized: May 7, 2020, by Lamont O. Repollet, Ed.D, Commissioner, Department of Education.

Authority: N.J.S.A. App.A:9-45 and App. A:9-47; Executive Order No. 103 (2020)

Effective Date: May 7, 2020.

Expiration Date: Upon the Termination of the Emergency Declaration Made Pursuant to Executive Order No. 103 (2020).

This is an emergency adoption of temporary modifications to rules governing the operation of school districts pursuant to N.J.A.C. 6A:32-7.1 and 7.5. Section 6 of EO 103 and Section 1 of EO 117, issued in response to the COVID-19 pandemic, authorize agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the

Commissioner of the Department of Health, the Commissioner of Education is modifying Department of Education rules as follows:

Current Department regulations at N.J.A.C. 6A:32-7.1 and 7.5 require district boards of education to provide access to student records to “all authorized organizations, agencies, and persons defined” (authorized persons) within 10 days of a request. Pursuant to N.J.A.C. 6A:32-7.1(b), a student record, by definition, is “maintained within the school district.”

In light of the extended public health-related school closures, authorized persons cannot access student records by reviewing the records in person within the school district. Therefore, school district staff must make student records otherwise available for review. In these unprecedented times, school districts must direct their limited resources of time and talent toward the most pressing needs of their students. Thus, the ability of district boards of education to reproduce student records for disclosure or to send to another school district if a student has transferred within the requisite 10 day time period may prove overly burdensome. Therefore, requiring school districts to provide student records within 10 days of a request would be burdensome during the public health-related school closures.

Under the modified rules, district boards of education will be required to make a “reasonable effort” to provide student records in response to requests from authorized persons within 10 days; however, the language guaranteeing the production of the student records within this timeframe will be removed. These modifications are consistent with P.L. 2020, c. 10, which applies to school districts, and the modifications to a state agency’s deadline to respond to a request for a government record under the Open Public Records Act, N.J.S.A. 47:1A-1, et seq., during a public health emergency.

Full text of the proposed modifications follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

Subchapter 7. Student Records

6A:32-7.1 General considerations

(a)-(f) (No change.)

(g) Each district board of education shall establish written policies and procedures for student records that:

1. [Guarantee] **Require a reasonable effort to be made to provide** access to persons authorized under this subchapter within 10 days of a request, but prior to any review or hearing conducted in accordance with N.J.A.C. 6A;

2. – 10. (No change.)

(h) – (l) (No change.)

6A:32-7.5 Access to student records

(a) – (d) (No change.)

(e) Authorized organizations, agencies, and persons shall include only the following:

1. – 9. (No change.)

10. Officials of other district boards of education within the State or other educational agencies or institutions where the student is placed, registered, or seeks to enroll subject to the following conditions:

i. - ii. (No change.)

iii. [All] **A reasonable effort shall be made to forward all** records [to be forwarded], including disciplinary records as specified in N.J.S.A.

18A:36-19a, [shall be sent] to the chief school administrator or his or her

designee of the school district to which the student has transferred within
10 school days after the transfer has been verified by the requesting school
district;

iv. – vi. (No change.)

11. - 16. (No change.)

(f) - (g) (No change.)