

CHAPTER 22
STUDENT RESIDENCY

Authority

N.J.S.A. 18A:38-1.

Source and Effective Date

R.2010 d.025, effective December 22, 2009.
See: 41 N.J.R. 3484(a), 42 N.J.R. 179(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 22, Student Residency, expires on December 22, 2016. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 22, Student Residency, was recodified from Subchapter 2, Entitlement to Attend School Based on Domicile or Residency in District, of N.J.A.C. 6A:28 by R.2004 d.377, effective October 4, 2004. See: 36 N.J.R. 2279(a), 36 N.J.R. 4448(a).

Chapter 22, Student Residency, was readopted as R.2010 d.025, effective December 22, 2009. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

- 6A:22-1.1 Purpose and scope
6A:22-1.2 Definitions

SUBCHAPTER 2. DISTRICT BOARD OF EDUCATION POLICIES

- 6A:22-2.1 Adoption by district board of education
6A:22-2.2 Discretionary admission of nonresident students

SUBCHAPTER 3. ELIGIBILITY TO ATTEND SCHOOL

- 6A:22-3.1 Students domiciled within the school district
6A:22-3.2 Other students eligible to attend school
6A:22-3.3 Housing and immigration status
6A:22-3.4 Proof of eligibility

SUBCHAPTER 4. INITIAL ASSESSMENT AND ENROLLMENT

- 6A:22-4.1 Registration forms and procedures for initial assessment
6A:22-4.2 Notices of ineligibility
6A:22-4.3 Removal of currently enrolled students

SUBCHAPTER 5. APPEAL OF INELIGIBILITY DETERMINATIONS

- 6A:22-5.1 Appeal to the Commissioner

SUBCHAPTER 6. ASSESSMENT AND CALCULATION OF TUITION

- 6A:22-6.1 Assessment of tuition where no appeal is filed
6A:22-6.2 Assessment of tuition where appeal is filed
6A:22-6.3 Calculation of tuition

SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

6A:22-1.1 Purpose and scope

(a) The rules in this chapter have been adopted to implement N.J.S.A. 18A:38-1.a through e. Other than by reference to the applicable statutes and rules, the chapter does not address attendance at school by nonresidents (N.J.S.A. 18A:38-3.a); children of certain military parents (N.J.S.A. 18A:38-3.b); children residing on Federal property (N.J.S.A. 18A:38-7.7 et seq.); or persons qualifying under N.J.S.A. 18A:38-1.f, which provides for attendance by homeless students and is implemented through N.J.A.C. 6A:17-2, Education of Homeless Children.

(b) The provisions of this chapter shall apply to students between five and 20 years of age, pursuant to N.J.S.A. 18A:38-1, and to younger or older students otherwise entitled by law to free public education.

(c) The provisions of this chapter shall be liberally construed so as to effectuate a student's constitutional and statutory right to a free public education.

Recodified from N.J.A.C. 6A:28-2.1 and amended by R.2004 d.377, effective October 4, 2004.

See: 36 N.J.R. 2279(a), 36 N.J.R. 4448(a).

Substituted "chapter" for "subchapter" throughout and amended the N.J.A.C. reference.

Amended by R.2010 d.025, effective January 19, 2010.

See: 41 N.J.R. 3484(a), 42 N.J.R. 179(b).

In (a), inserted "(N.J.S.A. 18A:38-3(a))", "certain" and "(N.J.S.A. 18A:38-3(b)), children residing on Federal property (N.J.S.A. 18A:38-7.7 et seq.);" and added (c).

Amended by R.2013 d.143, effective December 16, 2013.

See: 45 N.J.R. 1209(a), 45 N.J.R. 2551(a).

Rewrote the section.

Case Notes

Where a widowed member of the U.S. Army, whose "home base" domicile was Margate, New Jersey (which was not his domicile at the time of enlistment), was compelled to have his Pennsylvania parents provide day-to-day care for his disabled son while he was on active duty, the son's domicile was Margate, rather than in Pennsylvania, and he was consequently entitled to a free public education in Margate; the arrangement with the Pennsylvania grandparents was intended as a temporary measure, and to interpret the statutes otherwise would defeat their purpose. A.M.S. ex rel. A.D.S. v. Bd. of Educ. of Margate, OAL DKT. NO. EDU 218-07, 2007 N.J. AGEN LEXIS 1000, Commissioner's Decision (September 10, 2007), aff'd, SB No. 26-07, 2008 N.J. AGEN LEXIS 138 (N.J. State Bd. of Educ. January 9, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 410) adopted, which concluded that student, residing with maternal grandmother in district other than district in which mother resided, was to remain a student of the school district without charge and was not to be responsible for any tuition for the 2006-2007 school year where: (1) grandmother was domiciled in the district; (2) grandmother was supporting student *gratis* although mother made limited financial contributions to student's financial support; (3) grandmother was assuming all personal responsibilities for student relative to school requirements by attending parent-teacher conferences and IEP meetings; (4) grandmother intended to support student gratuitously for longer than the school year and even past graduation; (5) student's parents were incapable of supporting or providing

care for student due to family or economic hardships since father was incarcerated and mother had very limited income; and (6) student's parents did not send student to reside with grandmother solely for receiving a free education in the district. R.A.J. ex rel. C.A.P. v. Bd. of Educ. of Ewing, OAL Dkt. No. EDU 2329-07, 2007 N.J. AGEN LEXIS 512, Commissioner's Decision (July 27, 2007).

6A:22-1.2 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the content clearly indicates otherwise.

"Affidavit student" means a student attending, or seeking to attend, school in a school district pursuant to N.J.S.A. 18A:38-1.b and N.J.A.C. 6A:22-3.2(a).

"Appeal" means contested case proceedings before the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

"Applicant" means a parent, guardian, or a resident supporting an affidavit student who seeks to enroll a student in a school district; or an unaccompanied homeless youth or adult student who seeks to enroll in a school district.

"Guardian" means a person to whom a court of competent jurisdiction has awarded guardianship or custody of a child, provided that a residential custody order shall entitle a child to attend school in the residential custodian's school district unless it can be proven that the child does not actually live with the custodian. It also means the Department of Children and Families for purposes of N.J.S.A. 18A:38-1.e.

Recodified from N.J.A.C. 6A:28-2.2 and amended by R.2004 d.377, effective October 4, 2004.

See: 36 N.J.R. 2279(a), 36 N.J.R. 4448(a).

Rewrote the introductory paragraph and added a N.J.A.C. reference in "Affidavit student".

Amended by R.2010 d.025, effective January 19, 2010.

See: 41 N.J.R. 3484(a), 42 N.J.R. 179(b).

Added definitions "Appeal to the Commissioner" and "Guardian".

Amended by R.2013 d.143, effective December 16, 2013.

See: 45 N.J.R. 1209(a), 45 N.J.R. 2551(a).

In the introductory paragraph, deleted " , when used in this chapter," preceding "shall", and inserted "when used in this chapter"; in definition "Affidavit student", inserted "school", and updated the N.J.S.A. references; substituted definition "Appeal" for definition " 'Appeal to the Commissioner' or 'appeal' "; in definition "Appeal", deleted "of Education" following "Commissioner", and inserted " , Controversies and Disputes"; added definition "Applicant"; deleted definition "Commissioner"; and rewrote definition "Guardian".

Case Notes

Child was not entitled to attend school in her guardian's school district when it was proven that she did not actually live with the guardian under N.J.A.C. 6A:22-1.2. Investigators found that she lived an apartment in another district with her sister. The guardian was properly assessed a tuition charge for each day of ineligible attendance under N.J.A.C. 6A:22-6.2(a). D.A., ex rel L.A. v. Bd. of Educ. of the Twp. of West Orange, Essex Cnty., OAL Dkt. No. EDU 02601-14, 2014 N.J. AGEN LEXIS 424, Initial Decision (July 21, 2014).

SUBCHAPTER 2. DISTRICT BOARD OF EDUCATION POLICIES

6A:22-2.1 Adoption by district board of education

(a) Each district board of education shall adopt written policies and procedures incorporating the chapter's requirements, and shall make copies available to parents and the public.

(b) In all such policies and procedures, a district board of education shall construe liberally the chapter's provisions to effectuate students' constitutional and statutory right to a free public education.

Recodified from N.J.A.C. 6A:28-2.3 and amended by R.2004 d.377, effective October 4, 2004.

See: 36 N.J.R. 2279(a), 36 N.J.R. 4448(a).

Inserted references to policies and procedures and substituted "chapter" for "subchapter" throughout; in (b), inserted "of education" following "district board".

Amended by R.2010 d.025, effective January 19, 2010.

See: 41 N.J.R. 3484(a), 42 N.J.R. 179(b).

In (b), inserted "constitutional and statutory".

Amended by R.2013 d.143, effective December 16, 2013.

See: 45 N.J.R. 1209(a), 45 N.J.R. 2551(a).

In (a), inserted "chapter's", and substituted a comma for "of this chapter"; and rewrote (b).

6A:22-2.2 Discretionary admission of nonresident students

Nothing in this chapter shall be construed to limit a district board of education's discretion to admit nonresident students, or the ability of a nonresident student to attend school with or without payment of tuition with the accepting district board of education's consent, pursuant to N.J.S.A. 18A:38-3.a.

New Rule, R.2004 d.377, effective October 4, 2004.

See: 36 N.J.R. 2279(a), 36 N.J.R. 4448(a).

Amended by R.2013 d.143, effective December 16, 2013.

See: 45 N.J.R. 1209(a), 45 N.J.R. 2551(a).

Rewrote the section.

Case Notes

Grandmother, whose family had been subject to major emotional and physical upheaval, was not responsible for tuition for the period of her grandchildren's ineligible attendance, where the school district had persisted in treating the matter as a residency appeal when it was instead an appeal of the Board's discretionary determination not to consider the grandchildren as tuition-free nonresidents; it was due entirely to the actions of the Board and its agents that the grandchildren continued to attend school in Bloomfield and thus to incur potential liability for tuition. C.H. ex rel. B.M. v. Bd. of Educ. of Bloomfield, OAL Dkt. No. EDU 5181-07, 2008 N.J. AGEN LEXIS 258, Commissioner's Decision (January 22, 2008).

SUBCHAPTER 3. ELIGIBILITY TO ATTEND SCHOOL

6A:22-3.1 Students domiciled within the school district

(a) A student is eligible to attend a school district if he or she is domiciled within the school district.