

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-5.1.c(2), Chapter 22, Student Residency, expires on June 20, 2017. See: 48 N.J.R. 2663(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.

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

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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.

1. When required by the district board of education, the parent or guardian shall demonstrate the temporary residence is not solely for purposes of the student attending the school district of temporary residence;

2. When one of a student's parents or guardians temporarily resides in a school district while the other is domiciled or temporarily resides elsewhere, eligibility to attend school shall be determined in accordance with N.J.A.C. 6A:22-3.1(a)1i. However, no student shall be eligible to attend school based upon a parent or guardian's temporary residence in a school district unless the parent or guardian demonstrates, if required by the district board of education, the temporary residence is not solely for purposes of a student's attending the school district.

(d) A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-1.f if the student's parent or guardian moves to another school district as the result of being homeless, subject to the provisions of N.J.A.C. 6A:17-2, Education of Homeless Children.

(e) A student is eligible to attend the school district if the student is placed by court order or by a society, agency, or institution in the home of a school district resident pursuant to N.J.S.A. 18A:38-2. As used in this subsection, "court order" shall not encompass orders of residential custody under which claims of entitlement to attend a school district are governed by the provisions of N.J.S.A. 18A:38-1 and the applicable standards set forth in this chapter.

(f) A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-3.b if the student previously resided in the school district and if the parent or guardian is a member of the New Jersey National Guard or the United States reserves and has been ordered to active service in time of war or national emergency, resulting in the relocation of the student out of the school district. A school district admitting a student pursuant to N.J.S.A. 18A:38-3.b shall not be obligated for transportation costs.

(g) A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-7.7 et seq. if the student resides on Federal property within the State.

(h) In accordance with N.J.S.A. 18A:38-1.1, a student who is not considered homeless under N.J.S.A. 18A:7B-12 and who moves to a new school district during the academic year as a result of a family crisis shall be permitted to remain enrolled in the original school district of residence for the remainder of the school year without the payment of tuition. A student attending an academic program during the summer, who is otherwise eligible except for the timing of the move, shall be permitted to remain in the school district for the remainder of the summer program if it is considered an extension of the preceding academic year.

1. For purposes of this subsection, "family crisis" shall include, but not be limited to:

i. An instance of abuse such as domestic violence or sexual abuse;

ii. A disruption to the family unit caused by death of a parent or guardian; or

iii. An unplanned displacement from the original residence such as fire, flood, hurricane, or other circumstances that render the residence uninhabitable.

2. Upon notification of the move by the parent or guardian, the original school district of residence shall allow the student to continue attendance and shall provide transportation services to and from the student's new domicile in accordance with N.J.S.A. 18A:39-1. The original school district of residence may request from the parent or guardian and may review supporting documentation about the reason(s) for the move; however, any such review shall not interrupt the student's continued enrollment in the school district and in the current school of attendance with the provision of transportation.

i. Examples of documentation include, but are not limited to, newspaper articles, insurance claims, police or fire reports, notes from health professionals, custody agreements, or any other legal document.

3. If the parent or guardian or the relevant documentation indicates the child is homeless pursuant to N.J.S.A. 18A:7B-12, the school district liaison shall assume the coordination of enrollment procedures pursuant to N.J.A.C. 6A:17-2.5 and the student shall not be eligible for enrollment under N.J.S.A. 18A:38-1.1.

4. If the original school district of residence determines the situation does not meet the family crisis criteria at (h)1i through iii above, the superintendent or designee shall notify the parent or guardian in writing. The notification shall inform the parent or guardian of his or her right to appeal the decision within 21 calendar days of his or her receipt of the notification, and shall state that if such appeal is denied, he or she may be assessed the costs for transportation provided to the new residence during the period of ineligible attendance. It shall also state whether the parent or guardian is required to withdraw the student by the end of the 21-day appeal period in the absence of an appeal.

i. The parent or guardian may appeal by submitting the request in writing with supporting documentation to the executive county superintendent of the county in which the original school district of residence is situated.

ii. Within 30 calendar days of receiving the request and documentation, the executive county superintendent shall issue a determination whether the situation meets the family crisis criteria at (h)1i through iii above. The original school district of residence shall continue to enroll the student and provide transportation to the current school of attendance in accordance with N.J.S.A. 18A:39-1 until the determination is issued.

iii. If the executive county superintendent determines the situation does not constitute a family crisis, the school district may submit to the executive county superintendent for approval the cost of transportation to the ineligible student's new domicile. The executive county superintendent shall certify the transportation costs to be assessed to the parent or guardian for the period of ineligible attendance.

5. When the original school district of residence determines the situation constitutes a family crisis pursuant to N.J.S.A. 18A:38-1.1, the superintendent or designee shall immediately notify the parent or guardian in writing.

i. When the original school district of residence anticipates the need to apply for reimbursement of transportation costs, it shall send to the executive county superintendent a request and documentation of the family crisis for confirmation the situation meets the criteria set forth at (h)1i through iii above.

ii. Within 30 days of receiving the school district's request and documentation, the executive county superintendent shall issue a determination of whether the situation meets the criteria for a family crisis. The original school district of residence shall continue to enroll the student and provide transportation to the current school of attendance in accordance with N.J.S.A. 18A:39-1 until the determination is issued, and shall not be reimbursed for additional transportation costs unless the executive county superintendent determines the situation is a family crisis or as directed by the Commissioner upon appeal.

6. In providing transportation to students under N.J.S.A. 18A:38-1.1, district boards of education shall use the most efficient and cost-effective means available and in conformance with all laws governing student transportation.

7. At the conclusion of the fiscal year in which the executive county superintendent has determined the situation constitutes a family crisis, the original school district of residence may apply to the executive county superintendent for a reimbursement of eligible costs for transportation services.

i. Eligible costs shall include transportation for students who are required to be transported pursuant to N.J.S.A. 18A:39-1.

ii. School districts shall provide documentation of the transportation costs for the eligible student(s) to the executive county superintendent, who shall review and forward the information to the Department's Office of School Facilities and Finance for reimbursement payment(s) to the school district.

iii. Payment to the school district shall be made in the subsequent fiscal year and shall equal the approved

cost less the amount of transportation aid received for the student(s).

8. Nothing in this subsection shall prevent a district board of education from allowing a student to enroll without the payment of tuition pursuant to N.J.S.A. 18A:38-3.a.

9. Nothing in this subsection shall prevent a parent or school district from appealing the executive county superintendent's decision(s) to the Commissioner in accordance with N.J.A.C. 6A:3-1.3. If the Commissioner determines the situation is not a family crisis, his or her decision shall state which of the following shall pay the transportation costs incurred during the appeal process: the State, school district, or parent.

Recodified N.J.A.C. 6A:28-2.4(a)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 section.

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

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

Rewrote the section.

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.

Amended by R.2015 d.075, effective May 4, 2015.

See: 46 N.J.R. 1924(a), 47 N.J.R. 891(b).

Added (h).

Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 128) adopted, which found that a student was not domiciled in the district because she was living with her sister, not because her parents were incapable of supporting her, but because her parents wanted to provide her with a "fresh start"; the fact that a student had disciplinary problems in a particular district in the past and, having addressed those problems, was in need of a fresh start where her prior reputation did not precede her, did not constitute a hardship warranting a free education in a different district, nor did the stress engendered by living at home with a sibling attempting to overcome substance abuse. *J.D. ex rel. A.D. v. Bd. of Educ. of Lenape Reg'l High School Dist.*, OAL Dkt. No. EDU 8979-08, 2009 N.J. AGEN LEXIS 646, Final Decision (April 2, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 129) adopted, which found that a student was not entitled to enroll in the district because, even though the student lived with her grandmother, there was no evidence showing that the student's mother, who lived in Trenton, suffered from an economic hardship such that the mother could no longer provide for the child; in fact, the mother contributed to the support of the child's expenses, including clothing and school supplies, because the grandmother did not have the resources to provide for herself, much less the resources necessary to provide for her granddaughter. *P.B. ex rel. C.K. v. Bd. of Educ. of Lawrenceville*, OAL Dkt. No. EDU 8990-08, 2009 N.J. AGEN LEXIS 647, Final Decision (April 2, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 205) adopted, which concluded that grandchild could not attend school in grandmother's district free of charge where parents continued to provide monetary support (\$40 to \$60 a week) for child so that grandmother's support was not gratis as required by rule. Additionally, although grandchild sought to stay with grandmother due to tension in parents' home, fact that family members have a difficult time getting along with each other is not a legal basis to assert a claim of entitlement to attend public schools free of charge. *T.H. ex rel. J.R. v. Bd. of Educ. of Somerville*, OAL Dkt. No. EDU 249-08, 2008 N.J. AGEN LEXIS 1297, Commissioner's Decision (May 9, 2008).