

## 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.

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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 the provisions of 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 over five and under 20 years of age pursuant to N.J.A.C. 18A:38-1, and to such younger or older students as are otherwise entitled by law to free public education.

(c) The provisions of this chapter shall be liberally construed so as to effectuate the constitutional and statutory right of students 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).

#### 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, when used in this chapter, shall have the following meanings unless the content clearly indicates otherwise.

"Affidavit student" means a student attending, or seeking to attend, school in a district pursuant to N.J.S.A. 18A:38-1(b) and N.J.A.C. 6A:22-3.1(a)2.

"Appeal to the Commissioner" or "appeal" means contested case proceedings before the Commissioner of Education pursuant to N.J.A.C. 6A:3.

"Commissioner" means the Commissioner of Education or his or her designee.

"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 subject to a rebuttable presumption that the child is actually living with such 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".

## 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 requirements of this chapter and shall make copies available to parents and the public.

(b) In all such policies and procedures, a district board of education shall construe the provisions of this chapter liberally so as to effectuate the constitutional and statutory right of students 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".

### 6A:22-2.2 Discretionary admission of nonresident students

Nothing in this chapter shall be construed to limit the discretion of a district board of education to admit nonresident students, or the ability of a nonresident student to attend school, with or without payment of tuition, with the consent of the district board of education, 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).

#### 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 over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in a school district if the student is domiciled within the district.

1. A student is domiciled in the school district when he or she is the child of a parent or guardian whose permanent home is located within the school district. A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.

i. Where a student's parents or guardians are domiciled within different school districts, and where there is no court order or written agreement between the parents designating the school district for school attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year, regardless of which parent has legal custody.

ii. Where a student's physical custody is shared on an equal-time, alternating week/month or other similar basis such that the student is not living with one parent or guardian for a majority of the school year, and where there is no court order or written agreement between the parents designating the school district for school attendance, the student's domicile is the present domicile of the parent or guardian with whom the student resided on

the last school day prior to October 16 preceding the date of the application.

(1) Where such a student resided with both parents or guardians, or with neither parent or guardian, on the last school day prior to the preceding October 16, the student's domicile is the domicile of the parent or guardian with whom the parents or guardians indicate the student will be residing on the last school day prior to the ensuing October 16. Where the parents or guardians do not designate, or cannot agree upon, the student's likely residence as of that date, or if on that date the student is not residing with the parent or guardian previously indicated, the student shall attend school in the school district where the parent or guardian with whom the student is actually living as of the last school day prior to October 16 is domiciled.

(2) Where the domicile of a student with disabilities as defined in N.J.A.C. 6A:14 cannot be determined pursuant to this section, nothing in this section shall preclude an equitable determination of shared responsibility for the cost of such student's out-of-district placement.

iii. Where a student is living with a person other than a parent or guardian, nothing herein is intended to limit the student's entitlement to attend school in the parent or guardian's district of domicile pursuant to the provisions of this chapter.

iv. No school district shall be required to provide transportation for a student residing outside the school district for all or part of the school year, other than that based upon the home of the parent or guardian domiciled within the district to the extent required by law, as a result of being the district of domicile for school attendance purposes pursuant to the provisions of this chapter.

2. A student is domiciled in the school district when he or she has reached the age of 18 or is emancipated from the care and custody of a parent or guardian and has established a permanent home within the district. A home is permanent when the student intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.

3. A student is domiciled in the school district when the student has come from outside the State and is living with a person domiciled in the district who will be applying for guardianship of the student upon expiration of the six-month "waiting period" of State residency required pursuant to N.J.S.A. 2A:34-30(e) and 2A:34-31. However, any such student may later be subject to removal proceedings if application for guardianship is not made within a reasonable period of time following expiration of the mandatory waiting period, or if guardianship is applied for and denied.

4. A student is domiciled in the school district when his or her parent or guardian resides within the district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere.

5. A student is domiciled in the school district if the Department of Children and Families is acting as the student's guardian and has placed the student in the district.

(b) Where a student's dwelling is located within two or more school districts, or bears a mailing address that does not reflect the dwelling's physical location within a municipality, the district of domicile for school attendance purposes shall be that of the municipality to which the majority of the dwelling's property tax is paid, or to which the majority of the unit's property tax is paid by the owner of a multi-unit dwelling.

1. Where property tax is paid in equal amounts to two or more municipalities, and where there is no established assignment for students residing in the affected dwellings, the district of domicile for school attendance purposes shall be determined through assessment of individual proofs as provided pursuant to N.J.A.C. 6A:22-3.4.

2. This provision shall not preclude the attendance of currently enrolled students who were permitted to attend school in the school district prior to the provision's initial promulgation on December 17, 2001.

(c) Where a student's parent or guardian elects to exercise such entitlement, nothing herein is intended to foreclose a student's entitlement to attend school in the district of domicile notwithstanding that the student is qualified to attend school in a different district pursuant to N.J.S.A. 18A:38-1(b) or the temporary residency (less than one year) provision of N.J.S.A. 18A:38-1(d).

Recodified in part from N.J.A.C. 6A:28-2.4 and amended by R.2004 d.377, effective October 4, 2004.

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

In (a), substituted "any student domiciled within the school district who is" for "the following persons"; inserted "school" preceding "district" throughout; redesignated paragraphs throughout; in new (a)2, inserted "has reached the age of 18 or" preceding "emancipated" and deleted "independently" preceding "established a permanent"; added (b)2. Administrative correction.

See: 37 N.J.R. 2675(a).

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

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

Rewrote (a) and the introductory paragraph of (b); and added (c).

#### Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 527) adopted, which found that where two parents shared physical custody of their child on an equal-time, alternating-week basis, such that he was not living with one parent for a majority of the school year, and where there was no court order designating the school district of attendance, N.J.A.C. 6A:22-3.1 dictated that the child's domicile and residence was to be determined depending upon with whom he lived on the last school day prior to October 16 preceding the date of the application; contrary to the petitioner's argument, the residence of a student was not a method of last resort in determining the school district of attendance, but was the default where, as a general rule, school attendance was based on domicile and residence. *Bd. of Educ. of Westville v. Bd. of Educ. of*

Oaklyn, OAL Dkt. No. EDU 10144-05, 2009 N.J. AGEN LEXIS 748, Final Decision (September 29, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 315) adopted, which found that a student, who had turned 18, was domiciled in the district because, although the rest of the student's immediate family had moved out of district, the student continued to reside in-district with her aunt; the investigation conducted by the school district was neither germane nor relevant where no surveillance actually took place and where the investigator's conversation with the student's uncle was hearsay and the uncle may have been unaware of the actual living arrangements. *Marshall v. Bd. of Educ. of South Orange-Maplewood*, OAL Dkt. No. EDU 03822-09, 2009 N.J. AGEN LEXIS 630, Final Decision (July 15, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 297) adopted, which found that, even though a mother owned property in Irvington, a child was domiciled in West Orange because the mother's Irvington property was used as a business and was no longer her primary residence. Although the child was observed leaving the Irvington address in the morning over the course of several days and driven to West Orange to attend school, the ALJ found compelling and credible testimony that the mother brought her child to the daycare in the early hours until her assistant arrived and then drove the child to school. *Y.K. ex rel. T.K. v. Bd. of Educ. of West Orange*, OAL Dkt. No. EDU 1114-09, 2009 N.J. AGEN LEXIS 727, Final Decision (June 22, 2009).

Initial Decision (2009 N.J. AGEN LEXIS 14) adopted, which found that a school board was entitled to reimbursement for the cost of educating a student between February 1, 2008, and June 24, 2008, where the student was ineligible to attend the school upon a showing that the student resided with his grandmother, not due to a family or economic hardship, but for the sole purpose of enabling him to continue attending Clifton High School after his mother moved. There was no evidence that the grandmother was the student's legal guardian and the mother failed to appear at two hearings to present contrary evidence. *Bd. of Educ. of Clifton v. J.D. ex rel. G.T.*, OAL Dkt. No. EDU 11476-08, 2009 N.J. AGEN LEXIS 651, Final Decision (February 19, 2009).

Grandmother/legal guardian of a student demonstrated that she had at all times considered 806 W. Avenue in Colonia — where she lived since 1979 and raised her family — to be the place where she had her true, fixed, permanent home and principal establishment and to which whenever she was absent, she had the intention of returning, and from which she had no present intention of moving; the grandmother was compelled to leave 806 W. Avenue because of damage to her home which necessitated its demolition and rebuilding and was thwarted in her intention to return to her home by various building permit issues with the County and the Township and, as a consequence, was unable to physically reside at this property for more than two years. Her various temporary living arrangements during that period were no more than that, on her way back to 806 W. Avenue and it was amply evident that she considered it her domicile, never abandoning her intention to return there at the earliest possible time. *B.F.-H. ex rel. A.C. v. Bd. of Educ. of Woodbridge Twp.*, OAL Dkt. No. EDU 4848-08, 2009 N.J. AGEN LEXIS 632, Final Decision (February 9, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 856) adopted, which concluded that a township board of education's decision to disenroll a student from a district school was unsupported by the evidence. Pursuant to N.J.A.C. 6A:22-3.1(a)1, 4, the student was a township domiciliary where the student and his family moved out of the district temporarily but intended to possibly return to their in-district home where they had left personal property and continued to pay property taxes; there was no indication the student and his family intended to permanently abandon their in-district residence. *M.L. ex rel. G.R.C.L. v. Bd. of Educ. of Belleville*, OAL Dkt. No. EDU 5175-08, 2008 N.J. AGEN LEXIS 1102, Final Decision (November 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 776) adopted, which, in consolidated cases, determined that two mothers failed to sustain their burden of establishing, by a preponderance of the credible evidence, that they were domiciled within a school district so as to entitle their children to a free public education in that district. Pursuant to the requirements of

N.J.A.C. 6A:22-3.1(a)1, the mothers were not domiciled at their sister's home within the district, and the fact that family members within the district helped out with parental responsibilities did not form the factual predicate for concluding that permanent residence existed within the district. *M.J.-M. ex rel. E.A.M. v. Bd. of Educ. of Ridgefield*, OAL Dkt. No. EDU 5660-08 and EDU 5661-08 (Consolidated), 2008 N.J. AGEN LEXIS 1188, Final Decision (September 15, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 751) adopted, which determined that a student was required to pay tuition to a board of education due to ineligible attendance. Under N.J.A.C. 6A:22-3.1(a)1, the student was determined to have not been domiciled in the district of Linden based on investigator surveillance as well as the fact that the student's driver's license with the Linden address was changed two days before a board hearing; thus, the student failed to sustain her burden of proving she was domiciled within the district of Linden during the time frame in question, i.e., from December 20, 2006, to the end of school in 2007. *White v. Bd. of Educ. of Linden*, OAL Dkt. No. EDU 5370-07, 2008 N.J. AGEN LEXIS 1186, Final Decision (September 10, 2008).

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).

Initial Decision (2008 N.J. AGEN LEXIS 29) adopted, which concluded that since there was no dispute that petitioner was the father of the child in question and that petitioner was domiciled in the township, and having found that the child lived with petitioner on a permanent basis, the child was entitled to attend school free of charge under N.J.S.A. 18A:38-1(a) and N.J.A.C. 6A:22-3.1(a)1i. *R.A.R. ex rel. R.D.R. v. Bd. of Educ. of Black Horse Pike Reg'l High School Dist.*, OAL Dkt. No. EDU 8849-07, 2008 N.J. AGEN LEXIS 672 (March 5, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 27) adopted, which concluded that petitioner's niece through marriage, who lived with petitioner and her husband, while the child's parents lived separately outside the school district, was not domiciled in the district and was not eligible for free education. *L.T. ex rel. P.T. v. Bd. of Educ. of Ewing*, OAL Dkt. No. EDU 8545-07, 2008 N.J. AGEN LEXIS 264, Commissioner's Decision (February 28, 2008).

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 747) adopted, which concluded that parent who failed to appear and present proof that she and her children resided in the district had failed to demonstrate children's entitlement to attend schools in the district and that disenrollment of children from the schools and reimbursement to the Board of \$2,404.42 in tuition was required. Commissioner made no findings as to suggestion family might be homeless but pointed out that if petitioner claimed to be so, parties were required to follow the procedures set forth in N.J.A.C. 6A:17-2.1 (concerning education of homeless children). *S.M. ex rel. S.M. v. Bd. of Educ. of Bloomfield*, OAL Dkt. No. EDU 9962-07, 2008 N.J. AGEN LEXIS 272, Commissioner's Decision (January 11, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 483) adopted, which concluded that children were not domiciled in district and that grandparent was therefore required to pay tuition (\$15,472.08 total) for time children spent in school, and that children were to be disenrolled from the education programs in the district. Surveillance revealed that children were found to reside with parent outside district, not with grandparent. *B.W. ex rel. S.L. v. Bd. of Educ. of Ewing*, OAL Dkt. No. EDU 2627-07, 2007 N.J. AGEN LEXIS 1001, Commissioner's Decision (August 21, 2007).

Initial Decision adopted (2007 N.J. AGEN LEXIS 287), which concluded that children were not domiciled in West Orange during a 56-day period because their mother only intended to reside temporarily in her sister's West Orange home, and the children were observed over the course of several days leaving the Irvington address early in the morning; thus, the mother was required to reimburse the school district for their education. *M.L. ex rel. S.L. v. Bd. of Educ. of West Orange*, OAL Dkt. No. EDU 1122-06, 2007 N.J. AGEN LEXIS 509, Commissioner's Decision (June 19, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 256) adopted, which found that a student's mother intended Irvington to be her domicile, where she stated in a letter that she resided in that city, she received mail there, and her driver's license and pay stub indicated an Irvington address; thus, the student could not be domiciled in West Orange for purposes of N.J.S.A. 18A:38-1(a). *S.H. ex rel. S.B. v. Bd. of Educ. of West Orange*, OAL Dkt. No. EDU 1869-07 (EDU 9150-06 ON REMAND), 2007 N.J. AGEN LEXIS 522, Commissioner's Decision (June 13, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 70) adopted, finding that because a student's parents lived in India, and there had been no legal designation of guardianship to the student's aunt and uncle with whom the student resided, and because there was no showing of hardship or proof that the parents were incapable of supporting the student or that the student's medical concerns prevented the student from residing with the student's parents, the student was not entitled to free public education. *M.P. & D.P. ex rel. N.P. v. Bd. of Educ. of Morris Hills Reg'l School Dist.*, OAL Dkt. No. EDU 10975-06, 2007 N.J. AGEN LEXIS 298, Commissioner's Decision (April 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 898) adopted, which concluded that the evidence did not show that mother intended to change the domicile of her children from their home in the Bloomfield school district during the mother's temporary separation from the children's father; although the mother and children took up residence with the mother's parents in the East Orange school district, it was never her intention to divorce, she did not move most of the children's clothing and personal items from their Bloomfield home, her children accompanied her, but did not stay in East Orange continuously, and the mother always intended to, and did in fact, return to the Bloomfield home. *R.C. & B.C. ex rel. L.D.C. v. Bd. of Educ. of Bloomfield*, OAL Dkt. No. EDU 7153-06, Commissioner's Decision (December 5, 2006).

### 6A:22-3.2 Other students eligible to attend school

(a) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(b) if the student is kept in the home of a person other than the student's parent or guardian, where the person is domiciled in the school district and is supporting the student without remuneration as if the student were his or her own child.

1. A student is not eligible to attend school in a school district pursuant to this provision unless:

i. The student's parent or guardian has filed, together with documentation to support its validity, a

sworn statement that he or she is not capable of supporting or providing care for the student due to family or economic hardship and that the student is not residing with the other person solely for the purpose of receiving a free public education; and

ii. The person keeping the student has filed, if so required by the district board of education:

(1) A sworn statement that he or she is domiciled within the school district, is supporting the child without remuneration and intends to do so for a longer time than the school term, and will assume all personal obligations for the student relative to school requirements; and

(2) A copy of his or her lease if a tenant, or a sworn landlord's statement if residing as a tenant without written lease.

2. A student shall not be deemed ineligible under this paragraph because required sworn statement(s) cannot be obtained, where evidence is presented that the underlying requirements of the law are being met notwithstanding the inability of the resident or student to obtain the sworn statement(s).

3. A student shall not be deemed ineligible under this subsection where evidence is presented that the student has no home or possibility of school attendance other than with a district resident who is not the student's parent or guardian but is acting as the sole caretaker and supporter of the student.

4. A student shall not be deemed ineligible under this subsection solely because a parent or guardian gives gifts or makes limited contributions, financial or otherwise, toward the welfare of the student, provided that the resident keeping the student receives no payment or other remuneration from the parent or guardian for regular maintenance of the student.

5. Pursuant to N.J.S.A. 18A:38-1(c), any person who fraudulently allows a child of another person to use his or her residence and is not the primary financial supporter of that child and any person who fraudulently claims to have given up custody of his or her child to a person in another district commits a disorderly persons offense.

(b) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(b) if the student is kept in the home of a person domiciled in the district, other than the parent or guardian, where the parent or guardian is a member of the New Jersey National Guard or the reserve component of the United States armed forces and has been ordered into active military service in the United States armed forces in time of war or national emergency.



1. Eligibility under this subsection shall cease at the end of the current school year upon the parent or guardian's return from active military duty.

(c) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(d) if the student's parent or guardian temporarily resides within the district and elects to have the student attend school in the district of temporary residence, notwithstanding the existence of a domicile elsewhere.

1. Where required by the district board of education, the parent or guardian shall demonstrate that such temporary residence is not solely for purposes of a student's attending school within the school district of temporary residence;

2. Where 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 the criteria of 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 district unless the parent or guardian demonstrates, if so required by the district board of education, that such temporary residence is not solely for purposes of a student's attending school within the district.

(d) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(f) if the student's parent or guardian moves to another 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 over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-2 if the student is placed in the home of a district resident by court order or by a society, agency or institution as referenced in that statute. "Court order" as used in this subsection does not encompass orders of residential custody, under which claims of entitlement to attend school in a 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 over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-3(b) if the student had previously resided in the 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 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 over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in 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.

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.

#### 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).

Child living with his sister qualified as an "affidavit student" under N.J.S.A. 18:38-1(b) due to economic hardship, and also qualified under N.J.S.A. 18A:38-2 for a free education in the district where his sister lived, because a superior court order had been entered awarding joint legal and residential custody to the sister (adopting 2008 N.J. AGEN LEXIS 30). M.H.-C. ex rel. A.R. v. Bd. of Educ. of Ewing, OAL Dkt. No. EDU 8850-07, 2008 N.J. AGEN LEXIS 267, Commissioner's Decision (March 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 27) adopted, which concluded that mother's payment of \$400 a month constituted more than a "limited" contribution for support of her child while she was living with petitioner and, consequently, petitioner did not support the child gratis, as is required for purposes of the child's eligibility for free education in the district. *L.T. ex rel. P.T. v. Bd. of Educ. of Ewing*, OAL Dkt. No. EDU 8545-07, 2008 N.J. AGEN LEXIS 264, Commissioner's Decision (February 28, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 28) adopted, which concluded that father's payment of \$100 per week constituted more than a "limited contribution" for support of his child. Essentially, father was paying for the support of the child while she was at petitioner's home and, consequently, it was necessary to draw the conclusion that petitioner did not support the child, gratis, as is required by N.J.S.A. 18A:38-1. *R.C. ex rel. R.H. v. Bd. of Educ. of Ewing*, OAL Dkt. No. EDU 8546-07, 2008 N.J. AGEN LEXIS 265, Commissioner's Decision (February 25, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 28) adopted, which concluded that a claim of hardship based on the fact that child lived in her aunt's home because the father went to work early in the morning and did not return until late at night was not sufficient for purposes of eligibility for public school attendance at an out-of-district school. While it was a difficult situation, the fact of early work and late return home does not constitute hardship. *R.C. ex rel. R.H. v. Bd. of Educ. of Ewing*, OAL Dkt. No. EDU 8546-07, 2008 N.J. AGEN LEXIS 265, Commissioner's Decision (February 25, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 445) adopted, which concluded that where the evidence showed that the older brother of a student, a national of Colombia, was domiciled within a regional school district and was supporting the student gratis, despite their parents' statement in a "special authorization" document (giving the brother the authority to "represent us on any matter with the schools and hospital" as well as "legal custody" of the student) that "At this time is not possible for us to be with the minor due to work matters," the brother failed to present any evidence, testimonial or documentary, that might substantiate either a family or economic hardship which rendered the parents incapable of providing care or support for the student; moreover, an additional affidavit of the parents which listed an "economic and personal problem" and "security reason in Colombia" as reasons indicative of the hardship facing them, without any elaboration or explanation, merely stated a conclusion and provided nothing as to the nature of the hardship. *J.A.M. ex rel. C.A.M. v. Bd. of Educ. of Morris Hills Reg'l School Dist.*, OAL Dkt. No. EDU 3948-07, Commissioner's Decision (August 15, 2007).

Initial Decision (2007 N.J. AGEN LEXIS 411) adopted, which concluded that since maternal aunt was the applicant for purposes of allowing her nephew who resided with her to attend the township district schools as an affidavit student, it was her responsibility to ultimately provide support for the application or to obtain from others such information necessary to support that application, and where she failed to present any evidence that might establish either element, nephew was neither domiciled in the township school district or living in the home of someone domiciled in the district due to family or economic hardship. *D.R.P. ex rel. B.L.DeP. v. Bd. of Educ. of Hampton*, OAL Dkt. No. EDU 3139-07, 2007 N.J. AGEN LEXIS 550, Commissioner's Decision (July 25, 2007).

### 6A:22-3.3 Housing and immigration status

(a) The physical condition of an applicant's housing, or an applicant's compliance with local housing ordinances or terms of lease, shall not affect eligibility to attend school.

(b) Except as set forth in (b)1 below, immigration/visa status shall not affect eligibility to attend school. Any student over five and under 20 years of age pursuant to N.J.S.A.

18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, who is domiciled in the district or otherwise eligible to attend school there pursuant to N.J.A.C. 6A:22-3.2 shall be enrolled without regard to, or inquiry concerning, immigration status.

1. The provisions of N.J.S.A. 18A:38-1 and this chapter shall not apply to students who have obtained, or are seeking to obtain, a Certificate of Eligibility for Non-immigrant Student Status (INS form I-20) from the district in order to apply to the INS for issuance of a visa for the purpose of limited study on a tuition basis in a United States public secondary school ("F-1" visa).

i. Districts permitting the attendance of F-1 students may adopt policies and procedures requiring advance payment of tuition, or entry into binding agreements for payment of tuition, before the district will provide the requested I-20 form.

Recodified in part from N.J.A.C. 6A:28-2.4(b) through (d) 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.

### 6A:22-3.4 Proof of eligibility

(a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student's eligibility for enrollment in the school district:

1. Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency;

2. Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location;

3. Court orders, State agency agreements and other evidence of court or agency placements or directives;

4. Receipts, bills, cancelled checks, insurance claims or payments, and other evidence of expenditures demonstrating personal attachment to a particular location, or, where applicable, to support of the student;

5. Medical reports, counselor or social worker assessments, employment documents, unemployment claims, benefit statements, and other evidence of circumstances demonstrating, where applicable, family or economic hardship, or temporary residency;

6. Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others as appropriate;

7. Documents pertaining to military status and assignment; and

8. Any other business record or document issued by a governmental entity.

(b) A district board of education may accept forms of documentation not listed in (a) above, and shall not exclude from consideration any documentation or information presented by a person seeking to enroll a student.

(c) A district board of education shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a

particular form of documentation, or a particular subset of documents, without regard to other evidence presented.

(d) A district board of education shall not require or request, as a condition of enrollment in school, any information or document protected from disclosure by law, or pertaining to criteria which are not legitimate bases for determining eligibility to attend school. These include, but are not limited to:

1. Income tax returns;



2. Documentation or information relating to citizenship or immigration/visa status, except as set forth in N.J.A.C. 6A:22-3.3(b);

3. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and

4. Social security numbers.

(e) Documents or information of the type referenced in (d) above, or pertinent parts thereof, may be considered by the district board of education if voluntarily disclosed by the applicant seeking enrollment. However, the district board of education may not, directly or indirectly, require or request such disclosure as an actual or implied condition of enrollment.

Recodified from N.J.A.C. 6A:28-2.5 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 (a) and (d).

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)6, deleted "legal" preceding "guardian"; in the introductory paragraph of (d), inserted "but are not limited to:"; and in (e), inserted "considered by the district board of education if", and substituted "applicant" for "person" and "an actual or implied" for "a".

#### SUBCHAPTER 4. INITIAL ASSESSMENT AND ENROLLMENT

##### 6A:22-4.1 Registration forms and procedures for initial assessment

(a) Each district board of education shall use registration forms provided by the Commissioner (at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word)), or locally developed forms that:

1. Are consistent with the forms provided by the Commissioner;

2. Do not seek information prohibited by this subchapter or any other provision of statute or rule;

3. Summarize the criteria for attendance set forth in N.J.S.A. 18A:38-1 for applicant reference, and specify the nature and form of any sworn statements to be filed;

4. Clearly state the purpose, in relation to such criteria, for which requested information is being sought; and

5. Provide notice to applicants that any initial determination of eligibility is subject to more thorough review and re-evaluation, and that there is a potential for assessment of tuition in the event that an initially admitted applicant is later found ineligible.

(b) Each district board of education shall ensure that sufficient numbers of registration forms, and sufficient numbers

of trained registration staff, are available to ensure prompt determinations of eligibility and enrollment. Applications for enrollment may be taken by appointment, but such appointments must be promptly scheduled and may not unduly defer a student's attendance at school.

1. If the school district uses separate forms for "affidavit student" applications, rather than a single form for all types of application for enrollment, such forms shall comply in all respects with the provisions of (a) above. Where such forms are used, the district shall provide them to any person attempting to register a student of whom he or she is not the parent or guardian, whether or not they are specifically requested.

i. District boards of education or their agents shall not demand or suggest that guardianship or custody must be obtained before enrollment will be considered for a student living with a person other than the parent or guardian, since such student may qualify as an "affidavit student."

ii. District boards of education or their agents shall not demand or suggest that "affidavit student" proofs be produced by an applicant seeking to enroll a student of whom the applicant has guardianship or custody.

2. A district level school administrator designated by the chief school administrator shall be available, and clearly identified to applicants, to assist persons who are experiencing difficulties with the enrollment process.

(c) Initial determinations of eligibility shall be made upon presentation of an application for enrollment, and enrollment shall take place immediately in all cases except those of clear, uncontested denials.

1. Where an applicant has provided incomplete, unclear or questionable information, enrollment shall take place immediately, but the applicant shall be placed on notice that removal will result if defects in the application are not corrected, or an appeal is not filed, in accordance with subsequent notice to be provided pursuant to N.J.A.C. 6A:22-4.2.

2. Where a student appears ineligible based on information provided in the initial application, a preliminary written notice of ineligibility shall be provided, including an explanation of the right to appeal to the Commissioner, and enrollment shall take place immediately if the applicant clearly indicates disagreement with the district's determination and an intent to appeal to the Commissioner.

i. An applicant whose student is enrolled pursuant to this paragraph shall be notified that the student will be removed, without hearing before the district board of education, if no appeal is filed within the 21-day period established by N.J.S.A. 18A:38-1.

(d) Where enrollment is denied and no intent to appeal is indicated, applicants shall be advised that they shall comply

with compulsory education laws and shall, where the student is between the ages of six and 16, be asked to complete a written statement indicating that the student will be attending school in another school district, attending a nonpublic school, or receiving instruction elsewhere than at a school pursuant to N.J.S.A. 18A:38-25. In the absence of a written statement from the parent or guardian that the student will be attending school in another school district, attending a nonpublic school, or receiving instruction elsewhere than at a school, for purposes of ensuring compliance with compulsory education laws, designated staff shall contact the school district of actual domicile or residence, or the Department of Children and Families to report a potential instance of "neglect" pursuant to N.J.S.A. 9:6-1 ("willfully failing to provide regular school education as required by law"). Such staff shall provide the district or Department, as the case may be, with the student's name, the name(s) of the parent/guardian/resident, and the student's address to the extent known, and shall indicate that admission to the district has been denied based on residency or domicile, and that there is no evidence of intent to arrange for the child to attend school or receive instruction elsewhere.

(e) Where enrollment is denied and an intent to appeal is indicated, or where enrollment is provisional subject to further review or information, enrollment or attendance at school shall not be conditioned on advance payment of tuition in whole or part.

(f) Each district board of education shall ensure that information suggesting an applicant may be homeless is identified during the registration process, so that, where appropriate, procedures may ensue in accordance with N.J.A.C. 6A:17-2, Education of Homeless Children.

(g) Enrollment or attendance in the school district shall not be denied based upon absence of the certified copy of birth certificate or other proof of a student's identity required within 30 days of initial enrollment pursuant to N.J.S.A. 18A:36-25.1.

(h) Enrollment in the district shall not be denied based upon absence of student medical information, although actual attendance at school may be deferred as necessitated by compliance with rules regarding immunization of students, N.J.A.C. 8:57-4.

(i) Enrollment in the school district, attendance at school, or educational services where attendance in the regular education program appears inappropriate, shall not be denied based upon absence of a student's prior educational record. However, the applicant shall be advised that the initial educational placement of the student may be subject to revision upon receipt of records or further assessment of the student by the district.

Recodified from N.J.A.C. 6A:28-2.6 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.

Administrative correction.

See: 38 N.J.R. 3782(a).

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

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

Deleted "legal" preceding "guardian" and "guardianship" throughout; rewrote the introductory paragraph of (a); in the introductory paragraph of (b), inserted the second sentence; in (b)1i, substituted "must" for "shall"; in the introductory paragraph of (c)2, substituted "a student" for "an applicant"; in (c)2i, substituted "An applicant whose student is" for "A student" and "the student" for "he or she"; and rewrote (d).

#### 6A:22-4.2 Notices of ineligibility

(a) Where the subject of an initial application is found ineligible to attend the schools of the district pursuant to this chapter, or the application initially submitted is found to be deficient upon subsequent review or investigation, notice shall immediately be provided to the applicant consistent with sample form(s) to be provided by the Commissioner (at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word)) and meeting the requirements of this section.

1. Notices shall be in writing, in English and in the native language of the applicant, issued by the chief school administrator and directed to the address at which the applicant claims to reside.

(b) Notices of ineligibility shall include:

1. In cases of denial, a clear description of the specific basis on which the determination of ineligibility was made, sufficient to allow the applicant to understand the basis for the decision and determine whether to appeal;

i. Such description shall identify the specific subsection of N.J.S.A. 18A:38-1 under which the application was decided.

2. In cases of provisional eligibility, a clear description of the missing documents or information that shall be provided in order to attain final eligibility status under the applicable provision of N.J.S.A. 18A:38-1;

3. A clear statement of the applicant's right to appeal to the Commissioner within 21 days of the date of the notice, along with an informational document to be provided by the Commissioner (at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word)) describing how to file an appeal;

4. A clear statement that the student is entitled to attend school for the 21-day period during which an appeal can be made to the Commissioner, but that, if missing information is not provided or an appeal is not filed, the student will not be permitted to attend school beyond the 21st day following the date of the notice;

5. A clear statement that the student is entitled to continue attending school during the pendency of an appeal to the Commissioner;

6. A clear statement that, if an appeal is filed with the Commissioner and the applicant does not sustain the burden of demonstrating the student's entitlement to attend the schools of the district, or the applicant abandons the appeal through withdrawal, failure to prosecute or any means other than settlement, the applicant may be assessed, by order of the Commissioner enforceable in Superior Court, tuition for any period of ineligible attendance, including the initial 21-day period and the period during which the appeal was pending before the Commissioner;

7. A clear statement of the approximate rate of tuition, pursuant to N.J.A.C. 6A:22-6.3, that an applicant may be assessed for the year at issue if the applicant does not prevail on appeal, or elects not to appeal;

i. If removal is based on the student's having moved from the school district, the notice of ineligibility shall also provide information as to whether district policy permits continued attendance, with or without tuition, for students who move from the district during the course of the school year.

8. The name of a contact person in the district who can provide assistance in explaining the contents of the notice; and

9. Notice that, where no appeal is filed, the parent or guardian shall still comply with compulsory education laws, and that, in the absence of a written statement from the parent or guardian that the student will be attending school in another school district, attending a nonpublic school, or receiving instruction elsewhere than at a school, district staff shall notify the school district of actual domicile/residence, or the Department of Children and Families of a potential instance of "neglect" pursuant to N.J.S.A. 9:6-1 ("willfully failing to provide regular school education as required by law"). Such staff shall provide the student's name, the name(s) of the parent/guardian/resident, address to the extent known, denial of admission to the district based on residency or domicile, and absence of evidence of intent to attend school or receive instruction elsewhere, for purposes of facilitating enforcement of the State compulsory education requirement (N.J.S.A. 18A:38-25).

Recodified from N.J.A.C. 6A:28-2.7 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 introductory paragraph of (a) and (b)3; in (b)6, inserted "the student's"; and rewrote (b)9.

#### Case Notes

School district violated N.J.A.C. 6A:22-4.2 by issuing, to the parents of a student who no longer resided within the district, a notice of ineligibility that did not contain all of the information required therein because it did not advise the parents of their right to appeal the decision; of the student's right to remain in the district during the appeal period; the district's policy as to continued attendance, with or without payment

of tuition; or the parents' obligation to comply with the state's compulsory education law. That said, even though such deficiencies raised due process concerns, the parents did not suffer any harm by reason of the deficiencies and there was no basis in the regulation for a penalty to be imposed on the district due to its failure to satisfy all of the requirements of the regulation. *J.G. ex rel S.G. v. Lenape Reg. High Sch. Dist. Bd. Educ.*, OAL Dkt. No. EDU 15129-11, 2013 N.J. AGEN LEXIS 50, Initial Decision (March 4, 2013).

#### 6A:22-4.3 Removal of currently enrolled students

(a) Nothing in this subchapter shall preclude a district board of education from seeking to identify, through further investigation or periodic requests for current validation of previously determined eligibility status, students enrolled in the district who may be ineligible for continued attendance due to error in initial assessment, changed circumstances or newly discovered information.

(b) When a student, enrolled and attending school in the school district based on an initial determination of eligibility, is later determined to be ineligible for continued attendance, the chief school administrator may apply to the district board of education for removal of the student.

1. The chief school administrator shall issue a preliminary notice of ineligibility meeting the requirements of N.J.A.C. 6A:22-4.2. However, such notice shall also provide for a hearing before the district board of education prior to a final decision on removal.

(c) No student shall be removed from school unless the parent, guardian, adult student or resident keeping an "affidavit student," as the case may be, has been informed of his or her entitlement to a hearing before the board of education.

(d) Once the hearing is held, or if the parent, guardian, adult student or resident keeping an "affidavit student," as the case may be, does not respond to the chief school administrator's notice within the designated time frame or appear for hearing, the district board of education shall make a prompt determination of the student's eligibility or ineligibility and shall immediately provide notice thereof in accordance with the requirements of N.J.A.C. 6A:22-4.2.

(e) Hearings required pursuant to this subchapter may be conducted, if board policy so provides, by a committee of the district board of education which shall then make a recommendation to the full board; however, no student may be removed except by vote of the district board of education taken at a meeting duly convened and conducted pursuant to N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act.

Recodified from N.J.A.C. 6A:28-2.8 and amended by R.2004 d.377, effective October 4, 2004.

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

In (b), inserted "school district based on an initial determination of eligibility" preceding "attending school in the" introductory paragraph and amended the N.J.A.C. reference in 1 and (d).

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

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

In (c) and (d), deleted "legal" preceding "guardian".

## SUBCHAPTER 5. APPEAL OF INELIGIBILITY DETERMINATIONS

### 6A:22-5.1 Appeal to the Commissioner

(a) A school district determination that a student is ineligible to attend the schools of the district may be appealed to the Commissioner by the parent, guardian, adult student or resident keeping an "affidavit student," as the case may be. Such appeals shall be initiated by a petition of appeal, which shall be filed in accordance with N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1 and shall proceed as a contested case pursuant to N.J.A.C. 6A:3.

1. Pursuant to N.J.S.A. 18A:38-1(b)1, appeals of "affidavit student" ineligibility determinations shall be filed by the resident keeping the student.

Recodified from N.J.A.C. 6A:28-2.9 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 "school" for "local" preceding "district determination".

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.

## SUBCHAPTER 6. ASSESSMENT AND CALCULATION OF TUITION

### 6A:22-6.1 Assessment of tuition where no appeal is filed

(a) If no appeal to the Commissioner is filed by the parent, guardian, adult student or district resident keeping an "affidavit" student following notice of a determination of ineligibility, the district board of education may assess tuition for any period of a student's ineligible attendance, including the 21-day period provided by N.J.S.A. 18A:38-1 for appeal to the Commissioner.

1. If the responsible party does not pay the tuition assessment, the district board of education may petition the Commissioner pursuant to N.J.A.C. 6A:3 for an order assessing tuition, enforceable in accordance with N.J.S.A. 2A:58-10 through recording, upon request of the district board pursuant to N.J.A.C. 6A:3-12, on the judgment docket of the Superior Court, Law Division.

Recodified in part from N.J.A.C. 6A:28-2.10 and amended by R.2004 d.377, effective October 4, 2004.

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

Added (a)1.

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

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

In the introductory paragraph of (a), inserted "by the parent, guardian, adult student or district resident keeping an 'affidavit' student"; and rewrote (a)1.

#### Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 14) adopted, which found that a school board was entitled to reimbursement for the cost of educating a student between February 1, 2008, and June 24, 2008, where the student was ineligible to attend the school upon a showing that the

student resided with his grandmother, not due to a family or economic hardship, but for the sole purpose of enabling him to continue attending Clifton High School after his mother moved. There was no evidence that the grandmother was the student's legal guardian and the mother failed to appear at two hearings to present contrary evidence. Bd. of Educ. of Clifton v. J.D. ex rel. G.T., OAL Dkt. No. EDU 11476-08, 2009 N.J. AGEN LEXIS 651, Final Decision (February 19, 2009).

### 6A:22-6.2 Assessment of tuition where appeal is filed

(a) If an appeal to the Commissioner is filed by the parent, guardian, adult student or district resident keeping an "affidavit" student, where the petitioner does not sustain the burden of demonstrating entitlement to attend the schools of the district, or abandons the appeal through withdrawal, failure to prosecute or any means other than settlement agreeing to waive or reduce tuition, the Commissioner may order assessment of tuition for any period of a student's ineligible attendance in a school district, including the 21-day period for filing of an appeal and the period during which the hearing and decision on appeal were pending.

1. Upon the Commissioner's finding that an appeal has been abandoned, the district board of education may remove the student from school and seek tuition for the period of ineligible attendance pursuant to N.J.A.C. 6A:22-6.1(a). However, if the record of the appeal includes a calculation reflecting the rate(s) of tuition for the year(s) at issue, the per diem rate of tuition for the current year, and the date on which the student's ineligible attendance began, the Commissioner may order payment of tuition as part of his or her decision. If the record does not include such a calculation, but the district board has filed a counterclaim for tuition, the counterclaim shall proceed to hearing notwithstanding that the petition has been abandoned.

2. An order of the Commissioner assessing tuition is enforceable through recording, upon request of the district board pursuant to N.J.A.C. 6A:3-12, on the judgment docket of the Superior Court, Law Division, in accordance with N.J.S.A. 2A:58-10.

Recodified in part from N.J.A.C. 6A:28-2.10 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.

#### Case Notes

A school district rebutted claims that two minors resided with their father, admitted to be a resident of the district, and slept at his domicile every Tuesday, Friday and Sunday, and resided with their mother, who lived outside of the district, and slept at her domicile every Monday, Wednesday and Thursday by testimony of its safety and security coordinator that he in fact had observed the minors leaving the mother's home on several Wednesday mornings even though the minors had presumably slept at their father's house on the preceding Tuesday nights. Because the evidence thus did not support the claim of the father that the children were properly domiciled in the school district and were entitled to attend school in the district, the district was entitled to assess tuition against the parents pursuant to N.J.A.C. 6A:22-6.2(a). East Brunswick Bd. of Educ., Middlesex Cnty v. C.C. ex rel. L.C., OAL Dkt. No. EDU 14958-12, 2013 N.J. AGEN LEXIS 83, April 4, 2013, Initial Decision.

Board of education won a summary decision on its claim that it was entitled to tuition reimbursement for the period during which an ineligible student actually attended a school in the district. Also, and upon the entry of an order to that effect by the Commissioner of the N.J. Department of Education, the board was entitled to request per N.J.A.C. 6A:3-12 that the order be recorded on the judgment docket of the appropriate court. N.J.A.C. 6A:22-6.2(a)2. J.G. ex rel S.G. v. Lenape Reg. High Sch. Dist. Bd. Educ., OAL Dkt. No. EDU 15129-11, 2013 N.J. AGEN LEXIS 50, Initial Decision (March 4, 2013).

### 6A:22-6.3 Calculation of tuition

(a) Tuition assessed pursuant to the provisions of this section shall be calculated on a per student basis for the period of a student's ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1. The individual student's record of daily attendance shall not impact on such calculation.

(b) Nothing in this chapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the school district.

Recodified from N.J.A.C. 6A:28-2.10(b) and amended by R.2004 d.377, effective October 4, 2004.

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

In (a), amended the N.J.A.C. reference; in (b), substituted "chapter" for "subchapter" preceding "shall preclude" and inserted "school" following "ineligible attendance in the".

### Case Notes

Mother, determined to have been homeless from March 2006 to June 2007, was denied forgiveness of nonresident tuition owed for her child during the 2007-2008 school year; although N.J.A.C. 6A:22-6.3 expressly permits forgiveness when the facts so warrant, nothing in the record justified such an order. S.J. ex rel. V.J. v. Board of Educ. of South Orange-Maplewood School Dist., OAL Dkt. No. EDU 5656-07, 2008 N.J. AGEN LEXIS 666, Commissioner's Decision (March 3, 2008).

Where 15-year-old student had been attending West Orange schools since second grade, and lived — along with her mother — with her aunt, a homeowner in the West Orange district until September 2005, at which time her mother moved to Keansburg while student remained living with her aunt, student was no longer entitled to a free public education in the West Orange schools but equitable considerations compelled that the tuition recovery should commence only on December 7, 2005, the date on which the aunt filed her petition of appeal from the district's notification in late November 2005 that student was no longer entitled to attend school in West Orange. T.B. ex rel. L.B. v. Bd. of Educ. of West Orange, OAL Dkt. No. EDU 3276-06, 2006 N.J. AGEN LEXIS 922, Commissioner's Decision (October 12, 2006).