

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

Chapter 22, Student Residency, expires on December 22, 2014.

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