

3. Any documents any party wishes the Commission to consider shall be provided at least 10 days prior to the hearing; provided, however, that if the documents are not provided prior to the hearing, but are brought to the hearing, then the party submitting them must bring an original and 11 copies.

4. Any post-hearing submissions shall be provided within 14 calendar days of the hearing.

5. During the course of the investigatory proceedings before the Commission, all relevant evidence is admissible.

(e) Should the Commission find that probable cause does not exist, the Commission shall dismiss the complaint and so notify the complainant and the school official named in the complaint. Dismissal by the Commission upon a finding of no probable cause shall constitute final agency action.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Rewrote the section.

Recodified from N.J.A.C. 6A:28-1.11 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

In (a), inserted “, under the School Ethics Act or the Act and the Code of Ethics” at the end. Former N.J.A.C. 6A:28-1.12, Proceedings after finding of probable cause, recodified to N.J.A.C. 6A:28-1.14.

6A:28-1.13 Commission review of complaints alleging a violation of the Code of Ethics only

(a) Upon receipt of respondent’s statement or the expiration of the time for filing such response, the Commission shall place the complaint alleging a violation of the Code of Ethics on the agenda of the next regularly scheduled meeting to determine whether the board member has violated the Code of Ethics.

(b) The complainant has the burden to prove factually a violation under the Code of Ethics.

(c) All hearings shall be conducted in accordance with the rules of the OAL, N.J.A.C. 1:1.

(d) The Commission shall render a determination on whether a board member has violated the Code of Ethics within 90 days from its receipt of the complaint barring any exigent circumstances that would result in unfairness to either party.

(e) A finding of no violation by the Commission shall constitute final agency action.

(f) If a violation is found, the Commission shall recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. The imposition of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission.

Amended by R.2000 d.139, effective April 3, 2000.
See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Rewrote the section.

New Rule, R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

Former N.J.A.C. 6A:28-1.13, Written decision, recodified to N.J.A.C. 6A:28-1.15.

6A:28-1.14 Proceedings after finding of probable cause

(a) Should the Commission determine that probable cause does exist, and that material facts are in dispute, it shall refer the matter to the Office of Administrative Law for a hearing to be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and in accordance with the requirements of the OAL, as set forth in N.J.A.C. 1:1 and shall so notify the complainant and the school official(s) named in the complaint.

(b) Should the Commission determine that probable cause exists, and material facts are not in dispute, it shall notify the school official named in the complaint that he or she has 30 days from the date of the notice to submit a written statement setting forth the reasons he or she should not be found in violation of the Act based on the facts as set forth in the probable cause determination. If the school official disputes those facts, he or she should set forth the facts with which he or she disagrees and why they are material to the case.

Amended by R.2000 d.139, effective April 3, 2000.

See: 31 N.J.R. 4166(a), 32 N.J.R. 1189(a).

Rewrote the section.

Recodified from N.J.A.C. 6A:28-1.12 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

In (a), amended N.J.A.C. reference. Former N.J.A.C. 6A:28-1.14, Sanction, recodified to N.J.A.C. 6A:28-1.16.

6A:28-1.15 Written decision

(a) Upon completion of the hearing before the OAL or hearing by the Commission, the Commission shall determine by majority vote whether the conduct complained of constitutes a violation of the Act or whether the complaint should be dismissed. In rendering its decision, the Commission shall be governed by the procedures and time constraints of the Administrative Procedure Act and the rules of the OAL set forth at N.J.A.C. 1:1.

(b) In cases not alleging solely a violation of the Code of Ethics, if the case is not transmitted to the OAL, the record will close upon the filing of written submissions and the Commission shall have 45 days from the closing of the record to render its decision.

(c) The Commission’s decision shall be in writing and it shall set forth its findings of fact and conclusions of law.

(d) If a violation is found, the Commission shall recommend to the Commissioner the reprimand, censure, suspension, or removal of the school official. The imposition of any of the foregoing sanctions shall require a vote of the majority of the full membership of the Commission.

Recodified from N.J.A.C. 6A:28-1.13 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

In (a), inserted "or hearing by the Commission" in the first sentence and amended the N.J.A.C. reference in the second sentence; in (b), substituted "In cases not alleging solely a violation of the Code of Ethics, if" for "If".

6A:28-1.16 Sanction

(a) The Commissioner shall act upon the Commission's recommendation regarding the sanction pursuant to N.J.S.A. 18A:12-29(c). Such review shall proceed in accordance with the requirements of the OAL as set forth in N.J.A.C. 1:1.

(b) If the Commissioner imposes a penalty of censure, suspension or removal, the Commission shall adopt a Resolution at its next meeting following the imposition of the sanction by the Commissioner and shall direct that the Resolution be read at the next public meeting of the district board of education or charter school board of trustees following its adoption by the Commission and posted for a period of not less than 30 days in such places as the board posts its public notices.

(c) Any appeal of the Commission's determination regarding a violation of the Act or the Commissioner's decision regarding the sanction shall be to the State Board of Education in accordance with N.J.S.A. 18A:6-27 et seq. and the procedures set forth in N.J.A.C. 6A:4.

Recodified from N.J.A.C. 6A:28-1.14 and amended by R.2002 d.397, effective December 16, 2002.

See: 34 N.J.R. 3158(a), 34 N.J.R. 4434(a).

Amended N.J.A.C. and N.J.S.A. references in (a) and (c).

SUBCHAPTER 2. ENTITLEMENT TO ATTEND SCHOOL BASED ON DOMICILE OR RESIDENCY IN DISTRICT

Authority

N.J.S.A. 18A:4-15 and 18A:38-1.

Source and Effective Date

R.2001 d.464, effective December 17, 2001.

See: 33 N.J.R. 2790(a), 33 N.J.R. 3280(a), 33 N.J.R. 4331(a).

6A:28-2.1 Purpose and scope

The rules in this subchapter 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 subchapter does not address attendance at school by nonresidents, children of military parents, 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. 6:5, Provisions for the Education of Homeless Children and Youth.

6A:28-2.2 Definitions

As used in this subchapter, "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 "Commissioner" means the Commissioner of Education or his or her designee.

6A:28-2.3 Local district policies

(a) Each district board of education shall adopt written policies incorporating the requirements of this subchapter and shall make copies available to parents and the public.

(b) A district board shall construe the provisions of this subchapter liberally so as to effectuate the right of students to a free public education.

6A:28-2.4 Eligibility to attend school

(a) A district board of education shall admit to its schools, free of charge, the following persons over five and under 20 years of age:

1. Any student domiciled within the district;
 - i. A student is domiciled in the district when he or she is living with a parent or legal guardian whose permanent home is located within the 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.

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

(1) 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 for a majority of the school year, and where there is no court order or written agreement between the parents designating the district for school attendance, the student's domicile is the present domicile of the parent with whom the student resided on the last school day prior to October 16 preceding the date of the application.

(A) Where such a student resided with both parents, or with neither parent, on the last school day prior to the preceding October 16, the student's domicile is the domicile of the parent with whom the parents indicate the student will be residing on the last school day prior to the ensuing October 16. Where the parents 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 previously indicated, the student shall attend school in the district where the parent with whom the student is actually living as of the last school day prior to October 16 is domiciled.

(B) No district shall be required to provide transportation for a student residing outside the district for part of the school year, other than that based upon the home of the parent 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 subsection.

iii. A student is domiciled in the district when he or she is emancipated from the care and custody of a parent or legal guardian and has independently 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.

iv. A student is domiciled in the 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 legal 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 legal guardianship is not made within a reasonable period of

time following expiration of the mandatory waiting period.

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

vi. A student is domiciled in the district if the Division of Youth and Family Services in the Department of Human Services is acting as the student's legal guardian and has placed the student in the district.

vii. Where a student's dwelling is located within two or more local 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 resident pays the majority of his or her property tax, or to which the majority of property tax for the dwelling in question 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:28-2.5;

2. Any student kept in the home of a person other than the student's parent or legal 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;

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

(1) 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

(2) The person keeping the student has filed, if so required by the district board:

(A) A sworn statement that he or she is domiciled within the 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

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

ii. 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).

iii. A student shall not be deemed ineligible under this paragraph where evidence is presented that the student has no home or possibility of school attendance other than with a non-parent district resident who is acting as the sole caretaker and supporter of the student.

iv. A student shall not be deemed ineligible under this paragraph solely because a parent or legal guardian provides gifts or 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 the student's actual housing and support;

(1) Receipt by the resident of social security or other similar benefits on behalf of the student shall not serve as a basis for ineligibility under this paragraph;

3. Any student kept in the home of a person domiciled in the district, other than the parent or legal guardian, where the parent or legal 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;

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

4. Any student whose parent or legal guardian temporarily resides within the district, notwithstanding the existence of a domicile elsewhere;

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

ii. Where one of a student's parents temporarily resides in a district while the other is domiciled or temporarily resides elsewhere, eligibility to attend school shall be determined in accordance with the criteria of (a)1ii above. However, no student shall be entitled to attend school based upon a parent's temporary residence in a district unless the parent demonstrates, if so required by the district board, that such temporary residence is not solely for purposes of a student's attending school within the district;

5. Any student whose parent or guardian moves to another district as the result of being homeless, subject to the provisions of N.J.A.C. 6:5, Provisions for the Education of Homeless Children and Youth;

6. Any student placed in the home of a district resident by court order pursuant to N.J.S.A. 18A:38-2;

7. Any student previously residing in the district 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 pursuant to N.J.S.A. 18A:38-3(b); and

8. Any student residing on Federal property within the State pursuant to N.J.S.A. 18A:38-7.7 et seq.

(b) 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.

(c) Immigration/visa status shall not affect eligibility to attend school. However, the provisions of N.J.S.A. 18A:38-1 shall not apply to students holding or seeking a visa issued specifically for the purpose of limited study on a tuition basis in a United States public secondary school ("F-1 Visa").

(d) Nothing in this subchapter 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, pursuant to N.J.S.A. 18A:38-3(a).

6A:28-2.5 Proof of eligibility

(a) A district board of education shall accept any of the following forms of documentation from persons attempting to demonstrate a student's eligibility for enrollment in the 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 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, benefit statements, and other evidence of circumstances demonstrating, where applicable, family or economic hardship, or temporary residency;