

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

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).