

CHAPTER 22
STUDENT RESIDENCY

Authority

N.J.S.A. 18A:38-1.

Source and Effective Date

R.2004 d.377, effective September 10, 2004.
See: 36 N.J.R. 2279(a), 36 N.J.R. 4448(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 22, Student Residency, expires on March 9, 2010. See: 41 N.J.R. 3484(a).

Chapter Historical Note

Chapter 22, Student Residency, was recodified by R.2004 d.377, effective October 4, 2004, from Subchapter 2, Entitlement to Attend School Based on Domicile or Residency in District. 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, 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. 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.

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.

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.

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

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".

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 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".

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 living with a parent or legal 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 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 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 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 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 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 school district where the parent with whom the student is actually living as of the last school day prior to October 16 is domiciled.

(2) No school district shall be required to provide transportation for a student residing outside the school 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.

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 legal 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 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.

4. A student is domiciled in the school 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.

5. A student is domiciled in the school 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.

(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 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: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.

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).

Case Notes

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 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 if that student is 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.

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 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.

4. A student shall not be deemed ineligible under this subsection solely because a parent or legal 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 if the student is 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.

1. Eligibility under this subsection shall cease at the end of the current school year upon the parent or legal 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 if the student's parent or legal guardian temporarily resides within the district, notwithstanding the existence of a domicile elsewhere.

1. Where required by the district board of education, the parent or legal 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 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's temporary residence in a district unless the parent 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 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 if the student is placed in the home of a district resident by court order pursuant to N.J.S.A. 18A:38-2.

(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 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 pursuant to N.J.S.A. 18A:38-3(b).

(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 if the student resides on Federal property within the State pursuant to N.J.S.A. 18A:38-7.7 et seq.

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.

Case Notes

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 demonstrat-

ing 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, legal 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:

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 voluntarily disclosed by the person seeking enrollment. However, the district board of education may not, directly or indirectly, require or request such disclosure as a 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).

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, 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.

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 legal guardian, whether or not they are specifically requested.

i. District boards of education or their agents shall not demand or suggest that legal guardianship or custody shall be obtained before enrollment will be considered for a student living with a person other than the parent or legal 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 legal 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 an applicant 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. A student enrolled pursuant to this paragraph shall be notified that he or she 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 legal guardian that the student will be attending school in another school district, attending a nonpublic school, or receiving instruction elsewhere than at a school, designated staff shall contact the school district of actual domicile or residence, or the Division of Youth and Family Services based on "neglect" pursuant to N.J.S.A. 9:6-1 ("willfully failing to provide regular school education as required by law"), with 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 ensuring compliance with such laws.

(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).

6A:22-4.2 Notices of ineligibility

(a) Where an applicant 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 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 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 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 legal guardian shall still comply with compulsory education laws, and that, in the absence of a written statement from the parent or legal 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 Division of Youth and Family Services based on "neglect" pursuant to N.J.S.A. 9:6-1 ("willfully failing to provide regular school education as required by law"), of 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.

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, legal 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, legal 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 ineli-

gibility 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).

SUBCHAPTER 5. APPEAL OF INELIGIBILITY DETERMINATIONS

6A:22-5.1 Appeal to the Commissioner

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, legal guardian, adult student or resident keeping an "affidavit student," as the case may be. Such appeals shall proceed in accordance with N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1. Appeals of "affidavit student" eligibility 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".

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 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. The school district may obtain an order of the Commissioner for this purpose, enforceable pursuant to N.J.S.A. 2A:58-10 through recording on the judgment docket of the Superior Court, Law Division, by filing a petition of appeal pursuant to N.J.A.C. 6A:3.

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.

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

(a) If an appeal to the Commissioner is filed, where the appellant 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. An order of the Commissioner is enforceable through recording on the judgment docket of the Superior Court, Law Division, pursuant to 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.

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).