



NEW JERSEY LAW REVISION COMMISSION

Tentative Report

Relating to

State Scholarship and Grants

April 8, 2013

This Tentative Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Tentative Report, please inform the Commission so that your approval can be considered along with other comments.

COMMENTS SHOULD BE RECEIVED BY THE COMMISSION NOT LATER THAN July 7, 2013.

Please send comments concerning this Tentative Report or direct any related inquiries, to:

Laura C. Tharney, Executive Director
NEW JERSEY LAW REVISION COMMISSION
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07101
973-648-4575
(Fax) 973-648-3123
Email: lct@njlrc.org
Web site: <http://www.njlrc.org>

Introduction

This project resulted from the New Jersey Supreme Court decision in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 N.J.Super. 389, 5 (2012), in which the Court was asked to construe the provisions of the New Jersey's student financial aid laws that define who is eligible to receive a Tuition Aid Grant (TAG) outlined in *N.J.S. 18A:71B-2*. The main issue, found in subsection (b) of *N.J.S. 18A:71B-2*, is the ambiguity identified by the Court regarding what it means to be a "resident" of this State in the context of a dependent student whose parent or guardian is prevented from establishing, or has not established, a New Jersey residence. The Court held that "a student's legal residence [is] only presumed to be that of his or her parents' residence," and that such presumption can be rebutted. The Court stated that the Legislature, in addressing the impact of parents who move out of state, implicitly approved the presumption—but only a presumption—that a dependent student's legal residence was the same as his or her parent's residence.

In *A.Z. ex rel. B.Z.*, plaintiff was a citizen of the United States and had lived in New Jersey since 1997. *Id.* at 1. Her mother was an undocumented immigrant from Guatemala who supported plaintiff by herself. *Id.* After graduating from a New Jersey high school in 2011, the plaintiff applied for a Tuition Aid Grant (TAG) to assist her in attending college in New Jersey. *Id.* The plaintiff received notice from the Higher Education Student Assistance Authority (HESAA) notifying her that she was ineligible because her parents were not legal residents of New Jersey. *Id.* HESAA argued that, pursuant to *N.J.A.C. 9A:9-2.2(a)(1)*, plaintiff must be domiciled in New Jersey in order to satisfy the statutory residence requirement of *N.J.S. 18A:71B-2(b)* and because residence is synonymous with domicile in this context, plaintiff's domicile is deemed conclusively to be that of her mother's domicile since she is considered a dependent student. *Id.* at 3. Due to her mother's immigration status, the plaintiff's mother was not deemed domiciled in New Jersey and therefore the plaintiff was not either. *Id.* As such, HESAA determined that plaintiff failed to meet the residence-domicile requirement and therefore was ineligible to receive a TAG. *Id.*

The plaintiff appealed the decision of HESAA and the Appellate Division determined that HESAA's decision was based upon a misapplication of law and an administrative regulation that alters the terms of *N.J.S. 18A:71B-2(b)*. *Id.* at 1. In addition, the Appellate Division determined that conclusively deeming a dependent student's domicile to the domicile of his or her parent alters the plain meaning of the statute, and is contrary to the underlying legislative intent. *Id.* at 5. Such an interpretation was said to contravene a decades-old administrative interpretation implicitly approved by the Legislature that suggests a student's legal residence was only "presumed" to be that of his or her parents' residence. *Id.* This presumption could be rebutted with a showing that the plaintiff enjoyed a lengthy and continuous residence within the State. *Id.*

TAG is a monetary reward created by the State Legislature pursuant to *N.J.S. 18A:71B-18*. TAG was created to pay for as much as the full cost of tuition for students who attend an approved New Jersey college, university or degree-granting proprietary school. The Legislature

established the TAG program as, essentially, an entitlement program of tuition assistance for eligible needy students. *Id.* at 2. The amount of money received is dependent on several factors, including financial need, cost of attendance and available funding. As long as the student continues to meet all program eligibility requirements, TAG awards may be renewed annually. In addition to the school location requirements described by *N.J.S.* 18A:71B-1, the statute conditions eligibility on, among other things, submission of an application in satisfactory form, demonstration of financial need, satisfactory academic progress, and residency. *See N.J.S.* 18A:71B-20.

The TAG program's statutory residency requirement incorporates the requirements outlined in *N.J.S.* 18A:71B-20 subsection c.(1) but clarified in *N.J.S.* 18A:71B-2 subsection b., which apply generally to most state-funded student financial aid programs. For these programs, a person shall not be awarded a State tuition aid grant unless that person is a United States citizen, domiciled within the State, and is a resident of the State. *See N.J.S.* 18A:71B-2 subsections a., b., and c. The current issue pertains primarily to the residency requirement in subsection b. of *N.J.S.* 18A:71B-2 that provides:

b. A person shall not be awarded financial aid under this chapter unless the person has been a resident of this State for a period of not less than 12 months immediately prior to receiving the financial aid.

Title 9A of the New Jersey Administrative Code gives the HESAA the authority to create and adopt rules and regulations necessary for the proper administration of the TAG program. *See N.J.A.C.* 9A:9-1. As such, HESAA is charged with the responsibility of interpreting *N.J.S.* 18A:71B-2, in conjunction with *N.J.S.* 18A:71B-20, in order to develop, coordinate, and administer policies for the TAG program.

Pursuant to *N.J.A.C.* 9A:9-2.2(a), the residence of a student is defined in terms of domicile. Domicile is defined as “the place where a person has his or her true, fixed, permanent home and principle establishment, and to which, whenever he or she is absent, he or she has the intention of returning.” *Id.* Moreover, a dependent student is considered a legal resident of the state in which his or her parents are domiciled. *See N.J.A.C.* 9A:9-2.6. Despite a dependent student’s residence within the State, *N.J.A.C.* 9A:9-2.2(a)(1) states that a “dependent student whose parent(s) has not established a domicile in New Jersey shall be considered to be in the State for a temporary purpose of obtaining education and shall be ineligible for State student financial aid.” The result is that every dependent student whose parent has not established a domicile within the State, for whatever reason, is disqualified from receiving needed aid for school, even if that student has a true, fixed, permanent home within the State.

The Appellate Division examined the legislative history of the TAG program as well as the residency requirements outlined in *N.J.S.* 18A:71B-2 subsection b. and determined that irrefutably assigning to a dependent student the domicile of his or her parent alters the plain meaning of the statute, and is contrary to the underlying legislative intent. *A.Z. ex rel. B.Z* at 5. The Court found that the regulation contravenes decades-old administrative interpretation, implicitly approved by the Legislature in subsequent enactments, that a student’s legal residence was only “presumed” to be that of his or her parents’ residence. *Id.* In the 1991 codification of

the provision addressing the impact of parents who move out of the state, the Legislature implicitly approved the presumption—but only a presumption—that a dependent student’s legal residence was the same as his or her parent’s residence. *Id.* at 6.

At the inception of the TAG program, the administrative regulations included language suggesting that there was only a presumption that the parent’s residence determined the child’s legal residence. *Id.* However, in 2005, the administrative agency amended the regulations deleting relevant language regarding the presumption.

The Appellate Division has answered the question of what it means to be a “resident” of this State in the context of a dependent student whose parent or guardian is prevented from establishing, or has not established a New Jersey domicile. The HESAA, the authority responsible of administering the funds for student aid, is still controlled by a regulation that alters the terms of the governing statute. As a result, there is potential for the continuous misapplication of the law since the HESAA is mandated to act in accordance with the regulations.

If the statute is left unchanged, it could result in further litigation that could potentially be avoided by modifying the statute. Proposed draft language is set forth below.

DRAFT

N.J.S. 18A:71B-2. Student eligibility

a. A student who is enrolled in an eligible institution and who is eligible for and receives any form of student financial aid through a program administered by the State under this chapter shall be considered to remain domiciled in New Jersey and eligible for continued financial assistance notwithstanding the fact that the student is financially dependent upon the student’s parents or guardians and that the parents or guardians change their domicile to another State.

b. A person shall not be awarded financial aid under this chapter unless the person has been a resident of this State for a period of not less than 12 months immediately prior to receiving the financial aid. For the purposes of this section only, it shall be a rebuttable presumption that the residence of a dependent student is that of the student’s parents or guardians.

c. A person shall not be awarded student financial aid under this chapter unless the person is a United States citizen or eligible noncitizen, as determined under 20 U.S.C.s.1091. The authority shall determine whether persons who were eligible noncitizens prior to the effective date of the “Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” Pub.L.104-193, but not after that date, shall continue to be eligible for student financial aid under this chapter.

d. A person who is incarcerated shall not be eligible for student financial aid under this chapter.

COMMENT

The revision to *N.J.S. 18A:71B-2* follows what the Court in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority* determined to be the Legislature's intent and codifies that there is a rebuttable presumption that a dependent student's legal residence is the same as his or her parent's residence. The revision incorporates the determination of the Appellate Division in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 *N.J. Super.* 389 (2012), dealing with the ambiguity regarding what it means to be a "resident" of this State in the context of dependent students whose primary caregiver is prevented from establishing, or has not established, a New Jersey domicile. The Court held that conclusively deeming a dependent student to share the domicile of his or her parent alters the plain meaning of the statute. Moreover, it was determined that the legislative intent of the statute was that a student's legal residence is only "presumed" to be that of his or her parents' residence, a presumption that can be rebutted with a showing that the dependent student enjoyed a lengthy and continuous residence within the State. The revised language includes some of the language used in the Court's decision, and a clear explanation that the presumption is rebuttable.