

the last school day prior to October 16 preceding the date of the application.

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

(2) Where the domicile of a student with disabilities as defined in N.J.A.C. 6A:14 cannot be determined pursuant to this section, nothing in this section shall preclude an equitable determination of shared responsibility for the cost of such student's out-of-district placement.

iii. Where a student is living with a person other than a parent or guardian, nothing herein is intended to limit the student's entitlement to attend school in the parent or guardian's district of domicile pursuant to the provisions of this chapter.

iv. No school district shall be required to provide transportation for a student residing outside the school district for all or part of the school year, other than that based upon the home of the parent or guardian 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 chapter.

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 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 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 guardianship is not made within a reasonable period of time following expiration of the mandatory waiting period, or if guardianship is applied for and denied.

4. A student is domiciled in the school district when his or her parent or 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 Department of Children and Families is acting as the student's 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 majority of the dwelling's property tax is paid, or to which the majority of the unit's property tax 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.

(c) Where a student's parent or guardian elects to exercise such entitlement, nothing herein is intended to foreclose a student's entitlement to attend school in the district of domicile notwithstanding that the student is qualified to attend school in a different district pursuant to N.J.S.A. 18A:38-1(b) or the temporary residency (less than one year) provision of N.J.S.A. 18A:38-1(d).

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).

Amended by R.2010 d.025, effective January 19, 2010.

See: 41 N.J.R. 3484(a), 42 N.J.R. 179(b).

Rewrote (a) and the introductory paragraph of (b); and added (c).

Case Notes

Initial Decision (2008 N.J. AGEN LEXIS 856) adopted, which concluded that a township board of education's decision to disenroll a student from a district school was unsupported by the evidence. Pursuant to N.J.A.C. 6A:22-3.1(a)1, 4, the student was a township domiciliary where the student and his family moved out of the district temporarily but intended to possibly return to their in-district home where they had left personal property and continued to pay property taxes; there was no indication the student and his family intended to permanently abandon their in-district residence. M.L. ex rel. G.R.C.L. v. Bd. of Educ. of Belleville, OAL Dkt. No. EDU 5175-08, 2008 N.J. AGEN LEXIS 1102, Final Decision (November 12, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 776) adopted, which, in consolidated cases, determined that two mothers failed to sustain their burden of establishing, by a preponderance of the credible evidence, that they were domiciled within a school district so as to entitle their children to a free public education in that district. Pursuant to the requirements of N.J.A.C. 6A:22-3.1(a)1, the mothers were not domiciled at their sister's home within the district, and the fact that family members within the district helped out with parental responsibilities did not form the factual predicate for concluding that permanent residence existed within the district. *M.J.-M. ex rel. E.A.M. v. Bd. of Educ. of Ridgefield*, OAL Dkt. No. EDU 5660-08 and EDU 5661-08 (Consolidated), 2008 N.J. AGEN LEXIS 1188, Final Decision (September 15, 2008).

Initial Decision (2008 N.J. AGEN 751) adopted, which determined that a student was required to pay tuition to a board of education due to ineligible attendance. Under N.J.A.C. 6A:22-3.1(a)1, the student was determined to have not been domiciled in the district of Linden based on investigator surveillance as well as the fact that the student's driver's license with the Linden address was changed two days before a board hearing; thus, the student failed to sustain her burden of proving she was domiciled within the district of Linden during the time frame in question, i.e., from December 20, 2006, to the end of school in 2007. *White v. Bd. of Educ. of Linden*, OAL Dkt. No. EDU 5370-07, 2008 N.J. AGEN LEXIS 1186, Final Decision (September 10, 2008).

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 pursuant to N.J.S.A. 18A:38-1(b) if the student is kept in the home of a person other than the student's parent or 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 subsection where evidence is presented that the student has no home or possibility of school attendance other than with a district resident who is not the student's parent or guardian but 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 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 remun-

eration 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 pursuant to N.J.S.A. 18A:38-1(b) if the student is kept in the home of a person

domiciled in the district, other than the parent or guardian, where the parent or 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 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 pursuant to N.J.S.A. 18A:38-1(d) if the student's parent or guardian temporarily resides within the district and elects to have the student attend school in the district of temporary residence, notwithstanding the existence of a domicile elsewhere.

1. Where required by the district board of education, the parent or 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 or guardians 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 or guardian's temporary residence in a district unless the parent or guardian 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 pursuant to N.J.S.A. 18A:38-1(f) 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 pursuant to N.J.S.A. 18A:38-2 if the student is placed in the home of a district resident by court order or by a society, agency or institution as referenced in that statute. "Court order" as used in this subsection does not encompass orders of residential custody, under which claims of entitlement to attend school in a district are governed by the provisions of N.J.S.A. 18A:38-1 and the applicable standards set forth in this chapter.

(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 pursuant to N.J.S.A. 18A:38-3(b) 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, resulting in the relocation of the student out of the district. A school district admitting a student pursuant to N.J.S.A. 18A:38-3(b) shall not be obligated for transportation costs.

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

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.

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

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 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, 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, 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, but are not limited to:

1. Income tax returns;

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.

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 “af-fidavit 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 “af-fidavit” student following notice of a determination of ineligibility, the district board of education may assess tuition for any period of a student’s ineligibility 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.

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 “af-fidavit” 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 ineligibility 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 ineligibility 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 ineligibility 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.

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 ineligibility 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 ineligibility 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).