

Summary

The Department of Education is proposing to readopt N.J.A.C. 6A:22, Student Residency, with amendments. The chapter will expire on March 9, 2010 and must be readopted pursuant to N.J.S.A. 52:14B-5.1(c). Amendments are proposed for clarity and currency, and to reflect the holdings of recent relevant case law.

In accordance with the New Jersey State Constitution, Article VIII, Section IV, Paragraph 1, the Legislature established a system of free public schools for all children in the State. Through N.J.S.A. 18A:38-1, the Legislature provided for students to attend school in a particular district based upon domicile, residency or so-called “affidavit student” status (living with and supported by a person other than the parent or guardian for reasons not related to attending school). Effective January 1994, the Legislature substantially amended the statute to strengthen the criteria for “affidavit student” status, and to provide a new framework for determining student eligibility. The revised enactment sought to strike a balance between the right of students to a free public education and the need of local districts to ensure that persons attending school within their jurisdictions were, in fact, entitled to do so under the statute. The Legislature accomplished this by providing that students would be able to attend school in the district where they claimed to be domiciled or otherwise eligible for attendance under the statute, but also permitting a board of education to remove any student it believed to be ineligible following a 21-day period during which the board’s determination could be appealed to the Commissioner of Education. Then, if such an appeal were filed, the board could not remove the student from school during the pendency of proceedings before the Commissioner, but the Commissioner could assess tuition for the entire time of the student’s ineligible attendance if the petitioner did not prevail on appeal.

In the years subsequent to the 1994 amendment, experience proved implementing rules necessary to effectuate the provisions of the statute in a fair and consistent manner. The Department had been made aware, through literally hundreds of county office interventions, contested cases, and telephone and letter inquiries, that many districts did not recognize the right of students to attend school pending local district review of their eligibility and during the subsequent period for appeal to the Commissioner; that unreasonable or inappropriate degrees and forms of documentation were being demanded; that certain considerations, such as immigration or housing status, were improperly entering into district determinations of residency or domicile; and that the notices provided to parents/guardians/residents following local board determinations to deny eligibility were not always sufficiently informative to applicants regarding their rights and responsibilities following such denial. Conversely, parents frequently did not recognize a district's right to investigate their claims of residency or domicile and conduct periodic reassessments or re-registrations of enrolled students, or their obligation to pay tuition for attendance in the district while investigations or appeals are pending, if the student is ultimately found ineligible for enrollment. The difficulties inherent in attempting to apply the amended statute without implementing rules were also recognized by the Appellate Division of the Superior Court, which, in *J.A. v. South Orange and Maplewood Bd. of Ed.*, 318 N.J. Super. 512 (App. Div. 1999), expressly recommended adoption of such rules.

In response to this demonstrated need, a process of discussion and comment was initiated in the fall of 2000, culminating in the November 2001 adoption by the State Board of Education of N.J.A.C. 6A:28-2, Entitlement to Attend School Based on Domicile/Residency in the District. In September of 2004, these rules were readopted with amendments based on

further experience and developments in law, and additionally recodified as the separate chapter (N.J.A.C. 6A:22, Student Residency) now proposed for reoption. From their inception, the implementing rules for N.J.S.A. 18A:38-1 have sought to maintain the balance intended by the statute, deterring attempts to attend school in a particular district where there is no lawful entitlement to do so, while recognizing as paramount a student's right to free public education. In so doing, the rules serve the Mission Statement and Strategic Plan of the State Board of Education by providing for access by all New Jersey students to a public school system offering the learning opportunities that will allow them to obtain a superior education.

The rules proposed for reoption with amendments, like their predecessors, address the following areas:

- **Standards for determining eligibility.** The rules ensure that there will be clarity and consistency in defining domicile for all students, including those having parents or guardians domiciled in different districts. They also ensure that: inappropriate demands are not made of persons attempting to register "affidavit" students; temporary residency is clarified as a basis for attending school in a district; and considerations such as housing conditions or immigration/visa status do not enter into entitlement determinations.
- **Proofs of eligibility.** The rules ensure that applicants are afforded a range of possibilities from which to select forms of proof, so that districts do not request documents or information which are protected from disclosure or do not pertain to statutory eligibility requirements for the type of application submitted, and that districts do not demand any one specific form of

proof, or any specific subset of proofs, as an absolute condition of admittance regardless of other proofs presented.

- **Procedures for initial assessment upon presentation of application, and for prompt enrollment or notice of denial of admission.** The rules ensure that students are not deprived of education while applications are being more thoroughly assessed, and that appeals can be expeditiously filed in cases of denial.
- **Written notices of ineligibility.** The rules ensure that applicants can understand the specific basis for any adverse decision and be apprised of their rights and responsibilities with respect to continued attendance, appeal and potential liability for tuition, as well as of parent/guardian and district board obligations under the compulsory education law.
- **Procedures for removal of enrolled students.** The rules ensure that districts may seek removal of students due to changed circumstances, newly discovered information, more thorough assessment of applications or re-evaluation of status, and that hearings are conducted before the district board of education prior to a final decision to remove a student if the district's determination of ineligibility is disputed.

- **Appeals and assessment/calculation of tuition.** The rules ensure that students, parents and districts are aware of the processes for appealing determinations of ineligibility and enforcing tuition judgments in Superior Court; that there will be a uniform method of assessing and calculating tuition for periods of ineligible attendance; and that applicants will understand what their obligation may be if a student is enrolled in school and later found ineligible by the district board or by the Commissioner on appeal.

In most respects, the rules proposed for readoption are unchanged from the prior chapter, other than technical amendments, minor adjustments in the interest of currency and clarity, and three instances of “practical” amendment based on recent Department experience:

- 1) a clarification that school districts may take applications for enrollment by appointment so long as the scheduling of such appointments does not result in undue delay in enrolling students;
- 2) a clarification that appeals of district ineligibility determinations are made to the Commissioner through the contested case process as set forth in N.J.A.C. 6A:3, not the “appeals” process set forth in N.J.A.C. 6A:4 to implement the provisions of P.L. 2008, c. 36; and
- 3) a specific statement of the consequences of an appellant abandoning his or her appeal prior to its final adjudication or settlement.

Significant changes are proposed, however, to the rules governing standards for determining eligibility in order to implement the holdings of recent case law: *M.L.P., on behalf of minor child, C.L.P. v. Board of Education of the Township of Bloomfield, Essex County*, Commissioner decision #495-08, decided December 29, 2008; *A.M.S., on behalf of minor child, A.D.S. v. Board of Education of the City of Margate, Atlantic County, and Board of Education of the Township of Jackson, Ocean County*, Commissioner Decision No. 349-07, decided

September 7, 2007, affirmed State Board of Education, Decision No. 26-07, decided March 19, 2008; *V.S.-L., on behalf of minor child, Z.M.M. v. Board of Education of the City of Garfield, Bergen County*, Commissioner decision #4281-07, decided July 9, 2007; *I.B., on behalf of minor child, M.A., III v. Board of Education of the Township of Belleville, Essex County*, State Board of Education Decision No. 51-05, decided December 6, 2006; and *D.M. on behalf of minor child, B.N., v. Board of Education of the Township of Ewing, Mercer County*, State Board of Education Decision No. 20-02, decided November 5, 2003. Specifically, amendments are proposed to:

- 1) define the term “guardian” in light of contemporary family law which more commonly uses the concept of “custody” and clarify that references to “parent” mean “parent or guardian” within the context of this chapter;
- 2) stress that students have an absolute entitlement, should they choose to exercise it, to attend school in their district of domicile, even where a student might actually be living elsewhere with a person other than a parent or guardian or might also qualify for attendance in a different district based on “affidavit” status or temporary residency of less than one year;
- and 3) clarify that court orders entitling students to attend school in a district under N.J.S.A. 18A:38-2 – which are orders of placement in resource family (foster) homes – do not include orders of residential custody, which are governed by N.J.S.A. 18A:38-1 and are subject to a rebuttable presumption that the student is actually living with the designated custodian.

Additionally, the Department proposes to reiterate, in the chapter’s overall “Purpose and scope” section at N.J.A.C. 6A:22-1.1, a provision – currently found only in the section (N.J.A.C. 6A:22-2.1(b)) pertaining to local district policies and procedures – requiring the chapter to be liberally construed so as to effectuate a student’s right to free public education. The Department proposes such reiteration to stress – both to interested parties and to any tribunal

reviewing disputes arising under N.J.S.A. 18A:38-1 – that the chapter is not intended to be applied in a way that denies access to the public schools of a district where a student satisfies the requirements of statute, but his or her circumstances do not “fit” within the parameters of the Department’s implementing rules. The Department emphasizes that, while it has made every effort to provide clarity and consistency in situations of the type most commonly presented by applicants for enrollment, it cannot hope to foresee every scenario that might arise in regard to student residency and its rules are not intended to establish technical barriers to a student’s lawful attendance at school.

Cross-reference is made to rules, found in N.J.A.C. 6A:3, Controversies and Disputes, for appealing a district board’s determination of ineligibility to the Commissioner, and to rules, found in N.J.A.C. 6A:17-2, Education of Homeless Children, implementing the specific paragraph of N.J.S.A. 18A:38-1 dealing with homeless students. Pertinent statutes are referenced throughout the rules.

The Department has provided a 60-day comment period in this notice of proposal, so that this notice is excepted from the requirements of N.J.A.C. 1:30-3.3(a)5. The following summarizes the proposed readoption with amendments.

1. Purpose, Scope and Definitions

N.J.A.C. 6A:22-1.1 Purpose and scope

This section sets forth the general purpose and scope of the chapter. It includes proposed amendments to incorporate statutory references and more precisely delineate that

“children of military parents” as referenced in the existing rule was intended to apply to students addressed by N.J.S.A. 18A:38-3(b) and N.J.S.A. 18A:38-7.7 et seq. It further proposes to incorporate, for purposes of emphasis at the outset of the chapter, the provision previously found only at N.J.A.C. 6A:22-2.1(b), requiring the chapter to be liberally construed so as to effectuate a student’s lawful right to free public education.

N.J.A.C. 6A:22-1.2 Definitions

This section defines certain terms used throughout the chapter. Proposed for addition are: 1) a definition of “appeal to the Commissioner” or “appeal” so that parents, students and school officials may clearly recognize that this term refers to contested case proceedings before the Commissioner of Education as set forth in N.J.A.C. 6A:3, rather than Commissioner appeals of the type newly established by P.L. 2008, c. 38 and implemented through N.J.A.C. 6A:4; and 2) a definition of “guardian” that includes, in the interest of comprehensiveness, the Department of Children and Families for purposes of N.J.S.A. 18A:38-1(e), and encompasses, to avoid confusion and ambiguity in light of contemporary family law terminology, persons awarded “custody” of a child, with the proviso that orders assigning residential custody shall be subject to a rebuttable presumption that the child is actually living with the designated custodian.

2. District Board of Education Policies

N.J.A.C. 6A:22-2.1 Adoption by district board of education

This section requires each district board of education to adopt and make available to parents and the public written policies and procedures incorporating the requirements of the chapter, liberally construed so as to effectuate students' lawful right to free public education. To stress the source and preeminence of this right, an amendment is proposed referencing its statutory and constitutional origin.

N.J.A.C. 6A:22-2.2 Discretionary admission of nonresident students

This section clarifies that the rules of the chapter may not be construed to conflict with the statutory provision at N.J.S.A. 18A:38-3(a), which permits school attendance by nonresident students, with or without payment of tuition, at the discretion of the district board of education. No amendments are proposed to the current rule.

3. Eligibility to Attend School

N.J.A.C. 6A:22-3.1 Students domiciled within the school district

This section establishes who is entitled to attend the schools of a district based on domicile by attempting to provide clear, consistent rules addressing the many living situations which students may present upon applying for enrollment in a district. It also clarifies that the rules do not exclude students under the age of five or over the age of 20 from the scope of their coverage, where such students are otherwise entitled by law to free public education.

To reflect the holdings of recent case law, amendments are proposed to: 1) insert the words “or guardian” in a number of places to clarify that references to “parent” within the context of this chapter mean “parent or guardian,” and delete references to “legal” guardianship where a rule is intended to apply to “guardians” as proposed for definition at N.J.A.C. 6A:22-1.2; and 2) stress that students have an absolute entitlement, should they choose to exercise it, to attend school in their district of domicile, even where a student might actually be living elsewhere with a person other than a parent or guardian, or might also qualify for attendance in a different district based on “affidavit” status or temporary residency of less than one year. Technical amendments are proposed to: 1) ensure that the proposed N.J.A.C. 6A:22-3.1(a)iv (currently codified as N.J.A.C. 6A:22-3.1(a)1ii(2)), providing that entitlement to transportation is limited to the home of the district domiciliary in situations where a student attending school in the district of domicile lives outside the district, is clearly understood as applicable to all domicile situations for all or any part of a school year; 2) update a reference to the former Division of Youth and Family Services, now the Department of Children and Families; and 3) remove a potential for confusion in the provision (N.J.A.C. 6A:22-3.1(b)) on multi-unit dwellings by making its language more precise.

N.J.A.C. 6A:22-3.2 Other students eligible to attend school

This section provides for attendance at school on bases other than domicile. It establishes specific criteria for attendance based on “affidavit student” and temporary residency status, and incorporates statutory provisions for attendance by children of parents or guardians belonging to the National Guard or reserve component of the United States armed forces, children placed in the home of a district resident by court order, and children residing on Federal

property. It also clarifies that the rules are not intended to exclude students under the age of five or over the age of 20 from the scope of their coverage, where such students are otherwise entitled by law to free public education.

Amendments are proposed to: 1) stress that students have an absolute entitlement, should they choose to exercise it, to attend school in their district of domicile even if they qualify for attendance in a different district based on “affidavit” status or temporary residency of less than one year; 2) insert the words “or guardian” in a number of places to clarify that references to “parent” within the context of this chapter mean “parent or guardian,” and delete references to “legal” guardianship where a rule is intended to apply to “guardians” as proposed for definition at N.J.A.C. 6A:22-1.2; and 3) clarify that court orders entitling students to attend school in a district under N.J.S.A. 18A:38-2 do not include orders of residential custody, which are governed by N.J.S.A. 18A:38-1, subject to a rebuttable presumption that the student is actually living with the designated custodian. Technical amendments are proposed to add further statutory references and adjust existing references for parallel construction within the text of a rule.

N.J.A.C. 6A:22-3.3 Housing and immigration status

This section prohibits determinations of student eligibility based on housing conditions, compliance with the terms of a lease, or immigration/visa status other than in the case of a visa (F-1) issued for limited study in the United States on a tuition basis. In the latter case, the rule provides that school districts permitting attendance of F-1 students may adopt policies and procedures requiring advance payment of tuition before the school district will issue the

immigration form (I-20) necessary for a student to obtain an F-1 visa. No amendments are proposed to the current rule.

N.J.A.C. 6A:22-3.4 Proof of eligibility

This section identifies the types of documents districts must accept from applicants for enrollment, additionally clarifying that acceptable proofs are not strictly limited to those listed. The section requires proofs to be reviewed as a totality, and precludes districts from conditioning the admission or continued attendance of a student on any one document or subset of documents without regard to other proofs presented. It further prohibits demand of information or documents that are otherwise protected from disclosure, such as income tax returns, social security numbers, compliance with housing ordinances or conditions of tenancy, or immigration/visa status except in the case of F-1 student visas, although these may be voluntarily disclosed by an applicant. Amendments are proposed to emphasize that the list of prohibited documents should not be construed as all-inclusive, and that districts may neither demand such documents nor imply that they are necessary for enrollment, although they may be considered if voluntarily proffered. Consistent with changes made elsewhere in the chapter, the term “legal guardian” would be replaced by “guardian” as proposed for definition at N.J.A.C. 6A:22-1.2.

4. Initial Assessment and Enrollment

N.J.A.C. 6A:22-4.1 Registration forms and procedures for initial assessment

This section establishes requirements for student registration forms and procedures for initial assessment of student eligibility. It requires each district board of education to provide for: 1) prompt assessment of applications and admission of students, including use of registration forms supplied by the Commissioner or locally developed forms consistent with them; and 2) availability of trained staff and appropriate forms in sufficient number to ensure expeditious processing of various types of applications. It also requires that initial determinations of eligibility be made at the time of application, subject to more thorough review later, and that enrollment take place promptly in all cases except those of clear, uncontested denial. Where denial is uncontested, district staff are required to make contact with the school district of actual domicile or residence, or with the Department of Children and Families, to facilitate enforcement of compulsory education laws. Finally, it ensures that absence of student medical information, educational information, prior records or a birth certificate may not serve as a basis on which to deny enrollment; it further ensures that a student's provisional enrollment or attendance is not conditioned on advance payment of tuition in whole or part.

An amendment is proposed, based on Department experience, clarifying that applications for enrollment may be taken by appointment so long as the scheduling of such appointments does not result in undue delay in enrolling students. Consistent with amendments proposed elsewhere in the chapter, the term "legal guardian" would be replaced by "guardian" as proposed for definition at N.J.A.C. 6A:22-1.2. Technical amendments are proposed for greater clarity and precision in the text, and to update the reference to the former Division of Youth and Family Services.

N.J.A.C. 6A:22-4.2 Notices of ineligibility

This section establishes requirements for the form and content of the notice provided to an applicant who is found ineligible to attend the schools of the district. Requirements are established in the areas of language, statement of basis for determination, identification of missing documents or information, right of appeal to the Commissioner, entitlement to attend school during the period in which an appeal can be filed and during the pendency of any such appeal, removal of enrolled students where no appeal is filed by the end of the statutory appeal period, assessment of tuition at a specified rate for any period of ineligible attendance if no appeal is filed or an appeal is abandoned or decided in favor of the district, and compliance with compulsory education laws. The section also provides for sample notices to be prepared and made available by the Commissioner, and for the district to identify a contact person within the district who can provide assistance to the applicant in explaining the contents of the notice. Consistent with amendments proposed elsewhere in the chapter, the term “legal guardian” would be replaced by “guardian” as proposed for definition at N.J.A.C. 6A:22-1.2. Technical amendments are proposed for greater clarity and precision in the text, and to update the reference to the former Division of Youth and Family Services.

N.J.A.C. 6A:22-4.3 Removal of currently enrolled students

This section clarifies that district boards of education may seek 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. It

reiterates the statutory scheme providing that when a student, enrolled as eligible or provisionally eligible and attending school in the district, is later determined to be ineligible for continued attendance, the chief school administrator may apply to the district board for removal of the student following notice to the parent, guardian, adult student or resident keeping an “affidavit student,” and following a hearing before the district board. It also clarifies that such hearings may be conducted, if board policy so permits, by a committee of the board, upon whose recommendation the full board shall act by vote taken at a meeting duly convened and conducted pursuant to N.J.S.A. 10:4-6 et seq. (Open Public Meetings Act). Consistent with amendments proposed elsewhere in the chapter, the term “legal guardian” would be replaced by “guardian” as proposed for definition at N.J.A.C. 6A:22-1.2. No other amendments are proposed.

5. Appeal of Eligibility Determinations

N.J.A.C. 6A:22-5.1 Appeal to the Commissioner

This section provides that a local district determination of ineligibility to attend school may be appealed to the Commissioner and that such appeals shall proceed as set forth in N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1 with “affidavit student” appeals to be filed by the resident keeping the student. Amendments are proposed to reiterate that the appeals in question are initiated by the filing of a petition for contested case proceedings, consistent with the proposed definition of “appeal” in N.J.A.C. 6A:22-1.2. A technical amendment is proposed to add a statutory reference and provide for greater precision in the rule’s language.

6. Assessment and Calculation of Tuition

N.J.A.C. 6A:22-6.1 Assessment of tuition where no appeal is filed

This section provides that if no appeal is filed following the district's notice of ineligibility to the applicant, the district board of education may assess tuition for the period of ineligible attendance. It further memorializes that the district board may obtain a Commissioner's order assessing such tuition and have it enforced through recording of the judgment on the docket of the Superior Court pursuant to N.J.S.A. 2A:58-10. Technical amendments are proposed for greater clarity and precision in the rule's language, and a reference is added to identify the procedure (a new section to be proposed for inclusion in N.J.A.C. 6A:3 upon its impending readoption) for requesting recording of judgments.

N.J.A.C. 6A:22-6.2 Assessment of tuition where appeal is filed

This section provides that, at the conclusion of proceedings on appeal, where the appellant does not sustain the burden of demonstrating entitlement to attend the schools of the district or where the appeal is abandoned through withdrawal, failure to prosecute or any means other than settlement agreeing to waive or reduce tuition, the Commissioner may assess tuition for the period of a student's ineligible attendance in a district, including the 21-day period for filing of an appeal and the pendency of the hearing and decision on appeal. It further memorializes that the district board may have the Commissioner's assessment order enforced through recording of the judgment on the docket of the Superior Court pursuant to N.J.S.A. 2A:58-10. Amendments are proposed for precision in language, to more fully specify what appellants and district boards may expect when the Commissioner finds that an appeal has

been abandoned, and to add a reference to the procedure for requesting recording of judgments, embodied in a new section to be proposed for inclusion in N.J.A.C. 6A:3 upon its impending readoption.

N.J.A.C. 6A:22-6.3 Calculation of tuition

This section clarifies that tuition assessed pursuant to this chapter is to be calculated on a per student basis, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1, and that the individual student's record of daily attendance shall have no impact on calculation of the period of ineligibility. It also clarifies that equitable considerations may enter into tuition determinations both at the local district level and on appeal. No amendments are proposed to the current rule.

Social Impact

The rules proposed for readoption with amendments will permit the continued implementation of the statutory scheme providing each student access to a thorough and efficient system of public education, while enabling each district board of education to identify, remove and assess tuition for students who are unable to demonstrate entitlement to attend school within the district based on statutory criteria. The rules provide students, parents and district boards of education with clear notice of their rights and responsibilities, including the eligibility status of students in various types of circumstances and procedures designed to ensure prompt admittance to school so that students are not denied access to public education while awaiting resolution of their eligibility status.

Economic Impact

The rules proposed for readoption with amendments may have had, since their initial adoption in November 2001, some impact on individual school districts which previously implemented the operative statute so as to exclude or delay admission to students, as well as on districts which failed to provide adequate information to rejected applicants about their rights of appeal. Generally, however, additional costs to districts as a result of increased enrollment and residency-related litigation are offset by State aid together with tuition collected as a result of assessments against ineligible attendees. The rules proposed for readoption with amendments will impose no economic burden on applicants for school attendance, other than the cost of legal representation should an applicant choose to obtain it in conjunction with hearings before the district board of education or litigation arising out of a school attendance dispute.

Federal Standards Statement

The rules proposed for readoption with amendments will not be inconsistent with or exceed the Federal standards or requirements, since no such standards or requirements address the mechanisms prescribed in this chapter.

Jobs Impact

The rules proposed for readoption with amendments will result in neither generation nor loss of jobs in public school districts or the State.

Agriculture Industry Impact

The rules proposed for reoption with amendments will have no impact on the agriculture industry.

Regulatory Flexibility Statement

The rules proposed for reoption with amendments do not impose recording, recordkeeping or other compliance requirements on small businesses as defined by N.J.S.A. 52:14B-16 et seq., the Regulatory Flexibility Act. The rules impact solely upon New Jersey public schools.

Smart Growth Impact

The rules proposed for reoption with amendments will have no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The rules proposed for reoption with amendments will have no impact on the average cost of housing in the State. The rules establish standards and procedures for the enrollment of students in school based on domicile or residency.

Smart Growth Development Impact

The rules proposed for reoption with amendments and repeal will not evoke a change in housing production in Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The rules establish standards and procedures for the enrollment of students in school based on domicile or residency.

Full text of the rules proposed for reoption may be found in the New Jersey Administrative Code at N.J.A.C. 6A:22.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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 (N.J.S.A. 18A:38-3(a)), children of certain military parents (N.J.S.A. 18A:38-3(b)), children residing on Federal property (N.J.S.A. 18A:38-7.7 et seq.), 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) (No change).

(c) The provisions of this chapter shall be liberally construed so as to effectuate the constitutional and statutory right of students to a free public education.

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.

...

“Appeal to the Commissioner” or “appeal” means contested case proceedings before the Commissioner of Education pursuant to N.J.A.C. 6A:3.

...

“Guardian” means a person to whom a court of competent jurisdiction has awarded guardianship or custody of a child, provided that a residential custody order shall entitle a

child to attend school in the residential custodian's school district subject to a rebuttable presumption that the child is actually living with such custodian. It also means the Department of Children and Families for purposes of N.J.S.A. 18A:38-1(e).

SUBCHAPTER 2. DISTRICT BOARD OF EDUCATION POLICIES

6A:22-2.1 Adoption by district board of education

(a) (No change.)

(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 constitutional and statutory right of students to a free public education.

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] the child of 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 or guardians 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 or guardian 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 or guardian 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 or guardian 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 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.

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.

[(2)]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 [subsection] 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 [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] Department of Children and Families 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] the dwelling's property tax is paid, or to which the majority of the unit's property tax [for the dwelling in question] is paid by the owner of a multi-unit dwelling.

1. – 2. (No change).

(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).

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's parent or guardian elects to exercise such entitlement and if [that] the 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. – 2. (No change).

3. A student shall not be deemed ineligible under this [paragraph] subsection 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 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 [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. (No change).

(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 [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 pursuant to N.J.S.A. 18A:38-1(d) if the

student's parent or [legal] 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 [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 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)li. However, no student shall be eligible to attend school based upon a [parent's] 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 [pursuant to N.J.S.A. 18A:38-2] 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 [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 pursuant to N.J.S.A. 18A:38-7.7 et seq. if the student resides on Federal property within the State [pursuant to N.J.S.A. 18A:38-7.7 et seq.].

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. – 5. (No change).

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. – 8. (No change).

(b) – (c) No change).

(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. – 4. (No change).

(e) Documents or information of the type referenced in (d) above, or pertinent parts thereof, may be considered by the district board of education if voluntarily disclosed by

the [person] applicant seeking enrollment. However, the district board of education may not, directly or indirectly, require or request such disclosure as [a] an actual or implied condition of enrollment.

SUBCHAPTER 4. INITIAL ASSESSMENT AND ENROLLMENT

6A:22-4.1 Registration forms and procedures for initial assessment

(a) (No change).

(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. Applications for enrollment may be taken by appointment, but such appointments must be promptly scheduled and may not unduly defer a student's attendance at school.

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] must 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. (No change).

(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. (No change).

2. Where [an applicant] a student 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] An applicant whose student is enrolled pursuant to this paragraph shall be notified that [he or she] the student 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, for purposes of ensuring compliance with compulsory education laws, designated staff shall contact the school district of actual domicile or residence, or the [Division of Youth and Family Services based on] Department of Children and Families to report 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”)[, with]. Such staff shall provide the district or Department, as the case may be, with the student’s name, the name(s) of the parent/guardian/resident, and the student’s address to the extent known, [denial of] and shall indicate that admission to the district has been denied based on residency or domicile, and [absence of] that there is no evidence of intent to arrange for the child to attend school or receive instruction elsewhere[, for purposes of ensuring compliance with such laws].

(e) – (i) (No change).

6A:22-4.2 Notices of ineligibility

(a) Where [an applicant] the subject of an initial application 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. (No change).

(b) Notices of ineligibility shall include:

1. – 5. (No change).

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. – 8. (No change).

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] 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”)[, of]. 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).

6A:22-4.3 Removal of currently enrolled students

(a) – (b) (No change).

(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 ineligibility and shall immediately provide notice thereof in accordance with the requirements of N.J.A.C. 6A:22-4.2.

(e) (No change).

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, [legal] guardian, adult student or resident keeping an "affidavit student," as the case may be. Such appeals shall [proceed] 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. [Appeals] Pursuant to N.J.S.A. 18A:38-1(b)1, appeals of "affidavit student" [eligibility] ineligibility determinations shall be filed by the resident keeping the student.

SUBCHAPTER 6. ASSESSMENT AND CALCULATION OF TUITION

6A:22-6.1 Assessment of tuition where no appeal is filed

(a) If no appeal to the Commissioner is filed by the parent, guardian, adult student or district resident keeping an “affidavit” student following notice of a determination of ineligibility, the district board of education may assess tuition for any period of a student’s ineligible attendance, including the 21-day period provided by N.J.S.A. 18A:38-1 for appeal to the Commissioner.

1. [The school district] If the responsible party does not pay the tuition assessment, the district board of education may [obtain an order of] petition the Commissioner pursuant to N.J.A.C. 6A:3 for [this purpose] an order assessing tuition, enforceable [pursuant to] 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[, by filing a petition of appeal pursuant to N.J.A.C. 6A:3].

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

(a) If an appeal to the Commissioner is filed by the parent, guardian, adult student or district resident keeping an “affidavit” student, where the [appellant] petitioner does not sustain the burden of demonstrating entitlement to attend the schools of the district, or abandons the appeal through withdrawal, failure to prosecute or any means other than settlement agreeing to waive or reduce tuition, the Commissioner may order assessment of tuition for any period of a student’s ineligible attendance in a school district, including the 21-day period for filing of an appeal and the period during which the hearing and decision on appeal were pending.

1. Upon the Commissioner's finding that an appeal has been abandoned, the district board of education may remove the student from school and seek tuition for the period of ineligible attendance pursuant to N.J.A.C. 6A:22-6.1(a). However, if the record of the appeal includes a calculation reflecting the rate(s) of tuition for the year(s) at issue, the per diem rate of tuition for the current year, and the date on which the student's ineligible attendance began, the Commissioner may order payment of tuition as part of his or her decision. If the record does not include such a calculation, but the district board has filed a counterclaim for tuition, the counterclaim shall proceed to hearing notwithstanding that the petition has been abandoned.

[1.]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, [pursuant to] in accordance with N.J.S.A. 2A:58-10.