

Notice of Adoption for N.J.A.C. 6A:22, Student Residency

The following is the accessible version of the notice of adoption for the readoption with amendments at N.J.A.C. 6A:22. The notice of adoption document includes two sections – [comments and responses](#) and [amendments made upon adoption](#).

Education

State Board of Education

Student Residency

Readoption with Amendments: N.J.A.C. 6A:22

Proposed: March 18, 2024, at 56 N.J.R. 397(a).

Adopted: August 9, 2024, by the State Board of Education, Kevin Dehmer, Acting

Commissioner, Department of Education and Acting Secretary, State Board of Education.

Filed: August 9, 2024, as R.2024 d.086, **with a non-substantial change** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 18A:4-15 and 18A:38-1 et seq.

Effective Dates: August 9, 2024, Readoption;

September 3, 2024, Amendments.

Expiration Date: August 9, 2031.

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received from members of the public and the Department of Education's (Department) responses. Each commenter is identified at the end of the comment by a number that corresponds to the following list:

1. Peter Salerno
2. Jean Publiee
3. Laura Siclari, Attorney, Outside General Counsel Solutions/Santomassimo Davis LLP
4. Jean Puilee
5. John J. Burns, Senior Legislative Counsel, New Jersey School Boards Association

1. Comment: The commenter expressed support for the proposed amendments at N.J.A.C. 6A:22. The commenter stated that students who reside within the boundaries of a school district are entitled to a free, thorough, and efficient public education, and that each school district should be entitled to confirm students' residency status using all legal methods while maintaining student privacy. (5)

Response: The Department thanks the commenter for the support.

2. Comment: The commenter asked whether "teaching staff members" at N.J.A.C. 6A:22-3.2 is limited to instructional or certificated staff. The commenter also asked if the school district has the discretion to determine which staff members are eligible to have their nonresident children attend school in their employing school district. (1)

Response: N.J.A.C. 6A:22-3.2(i) permits a school district to allow the children of "teaching staff members" to attend school without payment of tuition pursuant to the school district's obligations pursuant to a collective bargaining agreement or district board of education policy. N.J.S.A. 18A:1-1 defines "teaching staff member" as a member of the professional staff of any school district or regional board of education, or any board of education of a county vocational school district, holding office, position, or employment of such character that the qualifications for such office, position, or employment require the person to hold a valid and effective standard, provisional, or emergency certificate issued by the State Board of Examiners, appropriate to the office, position, or employment.

3. Comment: The commenters stated that undocumented immigrants do not belong in New Jersey schools based on a Federal judicial decision in 1915. The commenters expressed concerns about the cost of education and the use of taxpayer money to fund education for

undocumented immigrants and contended that the costs reduce the funding and attention for other students. (2 and 4)

Response: The Department disagrees. According to the *Plyler v. Doe*, 457 US 202 (1982) decision, all states are required to provide education for all children, regardless of immigration status. The eligibility requirements for attendance at N.J.A.C. 6A:22 are required pursuant to State and Federal laws.

4. Comment: The commenter stated that N.J.A.C. 6A:22 should require district boards of education that admit nonresident students to their school district to explain to the public who is being admitted and to provide a rationale why they are being admitted. (4)

Response: District boards of education must disclose their policies, procedures, and actions to the public in accordance with the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the Senator Byron M. Baer Open Public Meeting Act, N.J.S.A. 10:4-6 et seq. School districts must establish policies regarding the enrollment of nonresident students, and the policies must be applied equitably to all students. The Department disagrees that the rationale for admitting an individual student should be publicly disclosed because such disclosure may violate State and Federal laws regarding student privacy.

5. Comment: The commenter disagreed with the proposed amendment at N.J.A.C. 6A:22-2.2 that will delete language allowing district boards of education discretion in the amount of tuition a school district can charge to nonresident students. The commenter expressed concern that certain circumstances should permit school districts the flexibility to negotiate and establish tuition charges through contractual settlements that are unique to each case. The commenter stated that such negotiations may be needed to maintain the continuity of education for students whose families move during the school year but are unable to afford

the full tuition rate to let students finish the year in the same school. (3)

Response: The Department disagrees. The adopted amendment is necessary to comply with P.L. 2023, c. 61, which requires a district board of education to charge a uniform tuition to all students who do not reside in the school district and are not eligible to attend school without the payment of tuition in accordance with other State or Federal laws (that is, homelessness, military service, family crisis, etc.). Nothing at N.J.A.C. 6A:22-2.2 should be construed as to limit a district's ability to negotiate a settlement where there is a dispute about a student's residency or eligibility to attend school without the payment of tuition.

6. Comment: The commenter opposed the rules proposed for readoption with amendments at N.J.A.C. 6A:22-3 that require school districts to enroll undocumented immigrants and expressed concerns about the cost of education and the use of taxpayers' monies to fund the education of undocumented immigrants. (4)

Response: The Department disagrees. According to the *Plyler* decision, all states are required to provide education for all children, regardless of immigration status. The eligibility criteria for attendance at N.J.A.C. 6A:22 are required pursuant to State and Federal laws.

7. Comment: The commenter disagreed with N.J.A.C. 6A:22-3.2(g), which allows students who reside on Federal property within the State to attend school, because the students "are on temporary status." The commenter contended that it is a violation of Federal law. (4)

Response: The Department disagrees. The existing rule complies with N.J.S.A. 18A:38-7.7 et seq., which states that all school-age children who reside on Federal property within the State are entitled to a free public education.

8. Comment: The commenter disagreed with proposed new N.J.A.C. 6A:22-3.2(i), which allows school districts to enroll nonresident children of teaching staff members for free. The commenter stated that teachers should pay normal tuition costs. (4)
Response: The Department disagrees. The rule is necessary to comply with P.L. 2023, c. 61, which allows district boards of education to establish policies or contracts that permit nonresident children of teaching staff members to attend without the payment of tuition.
9. Comment: The commenter opposed N.J.A.C. 6A:22-4.1(c), which requires school districts to immediately enroll students with incomplete documentation except in cases of clear uncontested denials. The commenter stated that proof should be required. (4)
Response: The Department disagrees. According to the *Plyler* decision, all states are required to provide education for all children, regardless of immigration status. The eligibility criteria for attendance at N.J.A.C. 6A:22 are required pursuant to State and Federal laws.
10. Comment: The commenter disagreed with N.J.A.C. 6A:22-5.1, which allows an individual to appeal to the Commissioner a district board of education's decision of ineligibility to attend a school. The commenter contended that that the rule is useless bureaucracy. (4)
Response: The Department disagrees. The rule readopted with amendments aligns with N.J.S.A. 18A:38-1, which states that "[t]he resident may contest the board's decision to the commissioner within 21 days of the date of the decision and shall be entitled to an expedited hearing before the commissioner of the claim." The appeals process is necessary to ensure fairness to all students found ineligible to attend a school district.
11. Comment: The commenter opposed N.J.A.C. 6A:22-6.1, which allows a district board of education, after determining that a student is ineligible to attend for free, to assess tuition

for the ineligible period of enrollment up to one year when no appeal is filed. The commenter stated that all tuition should be paid in advance and students should not be allowed to attend school if tuition has not been paid. (4)

Response: The Department disagrees with the commenter's requested change. N.J.S.A. 18A:38-3 permits a school district to allow nonresident students to attend with the payment of a uniform tuition rate, as established by the district board of education. The statute also provides exceptions for students who meet the criteria to attend the school district free of charge. N.J.A.C. 6A:22-6.1 appropriately limits the amount of tuition to be assessed to only one year when a student is found to be ineligible to attend for free. The limit balances the needs of the school district and taxpayers with the ineligible student's financial burden and right to appeal the school district's determination.

12. Comment: The commenter opposed N.J.A.C. 6A:22-6.2, which allows the Commissioner, after determining upon appeal that a student is ineligible to attend the school, to assess tuition for the ineligible period of enrollment up to one year. The commenter stated that an appeal should not result in taxpayers returning tuition revenues and that it is not fair to taxpayers. (4)

Response: N.J.A.C. 6A:22-6.2 does not require the payment of tuition until after an appeal, so no tuition revenue would be returned to a parent/guardian who successfully appeals a school district's determination of ineligibility.

13. Comment: The commenter opposed N.J.A.C. 6A:22-6.3, which provides the Commissioner discretion to forgive tuition payments. The commenter stated that the Commissioner should not have the power to forgive tuition payments. (4)

Response: The Department disagrees. It is a matter of fundamental fairness that the

Commissioner retain the authority to determine an appropriate payment or forgive tuition upon appeal when circumstances warrant it, such as an ineligible attendance determination that is the result of a school district's error.

14. Comment: The commenter stated that the Department removed the school district's ability to forgive tuition payments at N.J.A.C. 6A:22-2.2 but did not propose amendments at N.J.A.C. 6A:22-6.3 regarding the Commissioner's discretion in determining tuition payments in the case of an appeal. (3)

Response: The Department did not propose amendments at N.J.A.C. 6A:22-6.3 because N.J.S.A. 18A:38-3, which requires a school district to set a uniform tuition rate for nonresident students, did not alter the Commissioner's authority to determine an appropriate payment, or forgive tuition, upon appeal when circumstances warrant it.

15. Comment: The commenter asserted that educating all children regardless of their immigration status has a negative societal impact and is an improper use of tax dollars. (4)

Response: The Department disagrees. Educating children is demonstrated to have a positive benefit for society. Further, all states are required to provide education for all children, regardless of immigration status. The eligibility requirements for attendance at N.J.A.C. 6A:22 are required pursuant to State and Federal laws.

16. Comment: The commenter asserted that illegal immigration drives up the cost of housing. (4)

Response: To the extent that the commenter is referencing the Housing Affordability Impact Analysis, the rules readopted with amendments concern the standards and procedures for enrolling students in public schools and not housing. Otherwise, the comment is outside the scope of the rulemaking.

17. Comment: The commenter asserted that criminality in the State has increased, and the United States, as a whole, and the State have changed for the worse. (4)

Response: This comment is outside the scope of the rulemaking.

Summary of Agency-Initiated Change:

The Department is changing N.J.A.C. 6A:22-4.2(b)7i upon adoption to delete “or without” to align the regulation with P.L. 2023, c. 61, which requires school districts to charge tuition for nonresident students. The change upon adoption also mirrors the adopted amendment at N.J.A.C. 6A:22-2.2.

Federal Standards Statement

There are no Federal standards or requirements applicable to the rules readopted with amendments; therefore, a Federal standards analysis is not required.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 6A:22.

Full text of the adopted amendments follows; deletion from proposal indicated in brackets with asterisks *[thus]*):

Subchapter 4. Initial Assessment and Enrollment

6A:22-4.2 Notices of ineligibility

- (a) When a student is found ineligible to attend the school district pursuant to this chapter or the student’s initial application is found to be deficient upon subsequent review or investigation, the school district immediately shall provide to the applicant notice that is consistent with Commissioner-provided sample form(s) (available at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> or

<http://www.state.nj.us/education/code/current/title6a/chap22sample.docx>) and meets requirements of this section.

1. (No change.)

(b) Notices of ineligibility shall include:

1. (No change.)

2.–3. (No change from proposal.)

4.–6. (No change.)

7. A clear statement of the approximate tuition rate, 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 move from the school district, the notice of ineligibility shall also provide information as to whether school district policy permits continued attendance, with *[or without]* tuition, for students who move from the school district during the school year;

8.–9. (No change.)