

Understanding Public School Residency Requirements

A GUIDE FOR ADVOCATES



Acknowledgments

This manual was updated and revised for Education Law Center by Cindy Fine, Esq. Additional assistance in the preparation of this manual was provided by David Giles, Esq. and by Elizabeth Athos, Esq., senior attorney at Education Law Center.

About the Education Law Center

Founded in 1973, the Education Law Center (ELC) serves as the leading voice for New Jersey's public school children and has become one of the most effective advocates for equal educational opportunity and education justice in the United States. Widely recognized for groundbreaking court rulings on behalf of at-risk students, ELC also promotes educational equity through coalition building, litigation support, policy development, communications, and action-focused research in New Jersey, in other states, and at the federal level.

ELC's legal and policy advocacy, which includes such landmark rulings such as Abbott v. Burke, has significantly advanced the provision of fair school funding, high quality early education, safe and adequate school facilities, and school reform, especially to schools serving high concentrations of at-risk students and students with disabilities and other special needs. These successes have, in turn, resulted in strong academic gains and progress in closing student achievement gaps in New Jersey.

Disclaimer

The information provided in this guide helps explain the laws affecting the rights of students in school residency cases in New Jersey, but should not be construed as legal advice. This manual is provided for educational and informational purposes only, and contains general information that may not reflect current or complete legal developments. Readers are encouraged to seek appropriate legal advice from a licensed attorney on the particular facts and circumstances of their case.

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Introduction

Parents, guardians, caregivers and school administrators will sometimes disagree over whether a student may enroll in or continue to attend a public school based on his or her place of residence. The information in this manual is designed to help parents, guardians and caregivers understand New Jersey's public school residency rules and to inform them of their legal rights. While school districts make the initial determinations regarding a student's right to attend a given school, regulations adopted by the New Jersey Department of Education (NJDOE) provide extensive procedural protections to ensure that students are not denied enrollment without the opportunity for a fair hearing and that a student's education is not disrupted pending resolution of a residency dispute.

Section 1 -- When is a Student Entitled to Enroll in a District's Public Schools?

Overview of Residency Rules:

New Jersey law contains detailed rules specifying the categories of age-eligible¹ students entitled to a free public education within a given school district. The most widely-applicable, general rule is that a student may attend the school district in which his or her parent or guardian is "domiciled."² Domicile refers to one's permanent residence. While the school district in which a student may enroll is generally governed by the parent or guardian's domicile, another rule permits students to attend school in a district in which the parent or guardian *temporarily* resides, so long as such temporary residence has not been established "solely for purposes of the student attending the school district of temporary residence."³ For a student whose parents are divorced or separated and living in different school districts, the district in which the student may attend school may be determined by written agreement or court order; absent such an agreement or order, default rules contained in the regulations determine student domicile.

Special rules apply to students encountering various conditions of hardship, students in foster care, and students experiencing homelessness or family crisis. These rules permit attendance in a given school district by students (1) who are living in the home of someone domiciled in the district, other than the parent or legal guardian, due to family or economic hardship provided certain requirements are met,⁴ (2) who are living outside the school district due to certain categories of “family crisis,”⁵ (3) whose families have relocated outside the school district as a result of becoming “homeless” (as the term is defined in special rules governing the education rights of homeless students)⁶ or (4) who have been residentially placed by the Division of Child Protection and Permanency outside the school district but who attended school in the district prior to such placement.⁷ Similarly, special provisions allow students to continue to attend school in a given school district when they have relocated by reason of having a parent or guardian ordered into active military service during war or national emergency.⁸ The regulations further include special rules governing students who reside on federal property⁹ or whose residence falls within two different school districts.¹⁰

It should be noted that students with disabilities may attend a public or private school in a different school district -- at the expense of their home school district -- if their Individualized Education Program (IEP) provides for such “out-of-district” placement; issues regarding the placement of students with disabilities are discussed in ELC’s Publication, *The Right to Special Education in New Jersey*.¹¹ Certain students may receive their education on-site at various residential facilities (or in juvenile detention facilities), circumstances noted in Section 4 of this publication. Other circumstances in which students may attend school outside their home school district include: enrollment in a different school district under New Jersey’s Interdistrict Public School Choice Program; admission to charter schools or vocational-technical schools outside the district; attendance in an adjoining school district for students living remote from the school in their district;¹² and high school attendance in a different district because the home district lacks high school facilities.¹³ School districts may also admit nonresident students, with or without payment of tuition, in their discretion;¹⁴ some school districts grant free enrollment to the children of teaching staff irrespective of residence.¹⁵

Section 2 -- School Enrollment Based on Domicile of Parent or Guardian

General Rule:

The general rule is that a student is eligible to attend school in a district “if he or she is domiciled within the school district.”¹⁶ “Domicile” is defined as the place where a person lives in his or her fixed, permanent home: the place to which a person intends to return when he or she goes away and from which he or she has no intention of moving anytime soon.¹⁷ The domicile of a student is generally determined by the domicile of his or her parent or guardian;¹⁸ since children themselves “cannot formulate the requisite intent to establish domicile, their domicile follows that of their parents.”¹⁹

A person can have only one “domicile” at a time even if he or she has more than one residence. “Domicile” is “synonymous with the common understanding of the word ‘home.’”²⁰ If domicile has been established at a particular location, mere ownership of another home in another school district and payment of property taxes to that district do not entitle one's children to attend school in that other school district.²¹

Establishing Domicile and Moving to or From a School District:

While the determination of domicile involves a person’s *subjective intention* to make a given place his or her permanent home, parents or guardians must also be prepared to present *objective proof* of such intention in establishing eligibility to enroll a child in a given school district.²² As discussed in Section 7 of this publication, New Jersey regulations list documents to be submitted in establishing domicile. These documents include property tax bills, deeds, leases, mortgages, letters from landlords, voter registrations, utility bills, delivery and other receipts, insurance claims or payments and “other evidence of personal attachment to a particular location.”²³ School districts may also obtain a parent or guardian’s address from the New Jersey Motor Vehicle Commission.²⁴ Families moving from one school district to another should also be aware that a new “domicile” is not established until the parent/guardian is *actually physically present in the new location*, concurrent with their intention to remain

there.²⁵ This requirement – referred to as “an actual and physical taking up of an abode”²⁶ – may create problems for families who encounter unanticipated difficulties in completing a move, such as construction-related delays or delays generated by the seller of a family’s new dwelling.²⁷

In one case regarding enrollment in a new school district, the parents of two children purchased a home in the new district during the spring, and, anticipating being able to move into the home in the fall, registered their children during the summer to attend school in the new district in the fall (including signing an “affidavit of anticipated residency”). While the parents paid property taxes on their new home and had their driver’s licenses and voter registrations changed to reflect their new address, they delayed moving into the new home – and remained in their former dwelling – as the new home needed extensive renovations. The court ruled that the family had not established domicile in the new school district as *they never actually resided there* during the school year in dispute.²⁸ The fact that the family *remained in their previous home* also weighed against their claim of a new domicile. A person wishing to change domicile must show an intention to “abandon his old domicile.”²⁹ “[O]nce established, a domicile continues until superseded by a new domicile.”³⁰ Finally, the case suggests that its outcome may have been different – and free attendance in the new school district allowed – had the family actually moved in to their new home *even for a short period of time*. The Commissioner of Education’s opinion distinguished an earlier case in which a student’s guardian moved into his new residence but was forced to leave only a few months later when the residence was damaged by animals. In that other case, a new domicile was established at the time of the initial move to the new residence.³¹

While physical presence at a new residence is technically required to establish a new domicile, in practice, many school districts have adopted policies that establish “*grace periods*” for students whose parent(s) or guardian(s) anticipate moving to the district and have contracted to “buy, build or rent a residence” in the school district. These board of education policies, which may be found on school district websites, allow a certain period of

free attendance in the school district before the family actually relocates to the school district, with the amount of time (usually a number of weeks) varying by district.³² Similarly, these board policies may permit students whose parent(s)/guardian(s) are *moving out of the district* to finish a school year in the district if the move occurs within a certain time period before the end of a school year. Sometimes, these policies allowing continued attendance for the remainder of a school year include special rules for students in certain grades.³³ Parents or guardians who are moving from one district to another should check the applicable grace period policies of each district so as to avoid potential claims of ineligible attendance³⁴ and may be required to sign documents indicating their agreement to pay tuition to a new school district if the grace period expires before actual relocation to the district.³⁵

New Jersey law provides numerous exceptions to, and variations on, the general rule that a student is only entitled to attend school in the district in which his or her parent or guardian is domiciled; these exceptions and variations are explored in the remainder of this Section and in Sections 3 through 6 of this publication. In considering the rules discussed below, it should be noted that New Jersey's residency regulations are to be "liberally construed so as to effectuate a student's constitutional and statutory right to a free public education."³⁶ Accordingly, the exceptions and variations discussed below are, as a general proposition, intended to *expand* the scope of the general rule and benefit students, rather than act as technical barriers to lawful attendance at school.³⁷

Adult or Emancipated Students—Student's Own Domicile Governs:

Students who have reached the age of 18 (other than certain students with disabilities under guardianship) are generally treated as adults for purposes of the education laws.³⁸ Accordingly, the domicile of such an "adult student" is determined by his or her *own* place of domicile rather than the domicile of the student's parent or guardian.³⁹ This exception is relevant in the case of

a student attending high school past the age of 18 who has moved out of his or her parent or guardian's home.

Students who have become "emancipated" from their parents or guardians prior to the age of 18 are treated in the same manner as adult students; i.e., domicile is based on the permanent home of the emancipated minor rather than that of his or her parent or guardian.⁴⁰ An emancipated minor is one who lives completely independent of parental control and financial support.⁴¹ A student under the age of 18 who is attempting to establish a domicile separate and apart from his or her parent or guardian bears the burden of proving his or her independence.⁴²

Housing Status Irrelevant to Eligibility:

New Jersey regulations provide that "a student's eligibility to attend school shall not be affected by the physical condition of an applicant's housing or his or her compliance with local housing ordinances or terms of lease."⁴³ Consistent with this rule, a school district may not require a parent or guardian to submit, as a requirement for enrollment, documentation relating to compliance with local housing ordinances or conditions of tenancy.⁴⁴ Thus, even if the home in which a family lives violates local zoning or housing laws, the family may be considered domiciled in the school district in which such home is located for purposes of school enrollment. This point has been illustrated in cases involving families living in a campground⁴⁵ or motel⁴⁶ on a long-term basis in violation of local ordinances.⁴⁷ (It should be noted that students residing in "substandard conditions" may be treated as "homeless" and entitled to the special protections discussed in Section 3 of this publication.⁴⁸)

Immigration Status Irrelevant to Eligibility:

Under both state and federal law, school districts are obligated "to provide equal education opportunities to students regardless of their immigration status."⁴⁹ A New Jersey statute provides that "[a] school district shall not condition enrollment in the district on

immigration status,”⁵⁰ and regulations prohibit school districts from inquiring about immigration status⁵¹ or requiring documentation of such status or Social Security numbers as conditions of enrollment.⁵² The one limited exception to this rule pertains to students who have obtained, or are seeking to obtain, a Certificate of Eligibility for Nonimmigrant Student Status (INS form I-20) from the school district to apply for an F-1 visa for the purpose of limited study *on a tuition basis* in a United States public secondary school.⁵³

As of the date of this publication, federal Immigration and Customs Enforcement (ICE) policy disallows immigration enforcement actions at or focused on “sensitive locations,” including schools, except under limited circumstances.⁵⁴ Concern remains, however, about immigration enforcement actions targeting parents near schools.⁵⁵

Parent or Guardian Living in Temporary Residence:

A student has the right to attend school in a district in which his or her parent⁵⁶ is living on a temporary basis, even if the parent’s domicile is elsewhere.⁵⁷ The right to attend school in the district of temporary residence is at the choice of the parent – but the parent may be required to demonstrate that this temporary residence is not designed solely to allow the student to attend school within the district of temporary residence⁵⁸ (i.e., it is not a means of “school district shopping.”) A few examples of circumstances demonstrating that temporary residence was not solely for the purpose of a student’s attending a school district include moving to be closer to a medical treatment facility or to a temporary place of work.⁵⁹ By contrast, moving into a school district for a few months so that one’s child can play on the school district’s prestigious athletic team would appear to violate the rule. The meaning of “temporarily residing” in a school district was deliberately left undefined in the regulations.⁶⁰

A parent living temporarily outside the family’s original school district may choose to keep his or her child enrolled in their original district rather than enrolling in the district of temporary residence.⁶¹ The right to continued enrollment in the original school district

expires, however, if the parent stays in the temporary residence “on an all-year-round basis for one year or more.”⁶² Under this “one-year rule,” the student’s domicile for purposes of school attendance⁶³ is deemed to switch to the parent’s new place of residence after the expiration of one year.⁶⁴

While school districts are generally responsible for providing transportation to students residing more than a certain distance from school,⁶⁵ districts are not obligated to provide transportation based on the distance to a temporary residence outside the district; the right to transportation must be based on the in-district home of the parent or guardian.⁶⁶

Children of Divorced or Separated Parents:

As stated by the court in a recent residency case, “[i]t might seem that domicile is a fairly straightforward thing to define. But the shared custody arrangements for today’s children of divorce are as varied as the human imagination, making it difficult, at times, to assign domicile under the traditional rules.”⁶⁷

When a student’s parents (or guardians⁶⁸) are divorced or separated and residing in different school districts, one of the parent’s districts must be designated as the student’s domicile -- the concept of “dual domicile” has been rejected by the Department of Education in its regulations, with a very limited exception applicable to certain students with disabilities. Under the regulations, divorced or separated parents may “decide between themselves as to the district in which their child(ren) will attend school” -- so long as the parents’ decision is formalized in a court order or written agreement, the children’s domicile for purposes of school attendance will be dictated by the court order or written agreement irrespective of where the children actually reside.⁶⁹ (A written agreement between parents may be incorporated into a court order, but a court order is not required.⁷⁰) The Commissioner of Education recently reaffirmed this rule in a case in which a Consent Order issued by Family Court (prior to the school year in question) named the father as “‘parent of primary residence’ of the minor children ‘for purposes of schooling.’”⁷¹

This order was held sufficient, as a matter of law, to allow the children to attend school in the father’s school district. In so ruling, the Commissioner noted that the “fundamental purpose of the regulatory scheme is to ensure that students’ access to education is not disrupted by reason of disputes between parents and/or school districts.”⁷²

Parents in the process of divorce or separation are advised to address the issue of preferred school district as part of this process. Where there is *no court order or written agreement* between the parents designating the school district of attendance, the regulations provide the following “default” rules,⁷³ which distinguish arrangements in which a student lives with one parent for the majority of the school year from those in which a student alternates time equally between the parents.

A. Students Residing with One Parent for Majority of School Year

Where there is *no court order or written agreement* between divorced or separated parents designating a district for school attendance, the student is domiciled with the parent with whom the student resides for the majority of the school year, regardless of which parent has legal custody.⁷⁴

B. Physical Custody Shared Equally

i. “Look back” to last school day before October 16

In situations where physical custody is shared equally between the parents (such that the student does not live with either parent for the *majority* of the school year) and where there is *no court order or written agreement* designating the district for school attendance, the student’s domicile is the present domicile of the parent with whom the student resided on the last school day prior to the October 16th preceding the date of application for enrollment.⁷⁵ This date may sound arbitrary but is not: “a school district’s count of the number of children enrolled in the school register on the last school day prior to October 16 determines the amount of school aid that the school district generates from the state.”⁷⁶

Example: A student's parents divorce in 2016; their settlement agreement provides for shared custody alternating on a weekly basis and does not designate either parent's school district as the district of school attendance. If the student is enrolling in school in September 2017, he will be considered domiciled in the present school district of the parent with whom he resided on the last school day prior to October 16, 2016.

Parents with equal-time custody arrangements should be aware that an informal or verbal understanding between parents as to which school district a child will attend is not sufficient to determine the proper school district of enrollment and may leave them vulnerable to costly claims of ineligible attendance. In one recent decision, for example, a student whose parents shared custody continued to attend school for the 2015-2016 school year in the district she had lived in with both parents before their divorce; her father continued to reside in that district. While the court noted that the parents' "behavior" indicated an agreement between them about which school district their daughter would attend, they did not put this agreement in writing until March of 2016, when they filed a consent order in Superior Court designating the father's school district as the district of residence. Based on the court's finding that the child resided with her mother on October 15, 2015, the unfortunate result was a tuition charge to the parents of nearly \$6000 for school days prior to the filing of the consent order.⁷⁷ Parents who intend to share custody of their children equally are advised to determine the responsible school district, and place their agreement in writing, at the time of separation or divorce to avoid unfortunate consequences resulting from the rule determining district of residence based on the last school day prior to October 16.

ii. "Look forward" to last school day before next October 16

In cases of shared custody in which the student resided with both parents, or with neither parent, on the last school day before the preceding October 16th, a "look back" to this prior date will not be sufficient to determine the proper school district of enrollment. The regulations address this situation by requiring the parents to "look forward" and indicate where the student will be residing on the last school day prior to the *following* October 16; the domicile of the parent with whom the student will be residing on this future date then becomes the domicile of the student.⁷⁸

Example: A student lives with both of his parents throughout October 2016. The parents separate in December 2016, agreeing to share physical custody equally and failing to designate which parent’s residence governs school enrollment. For purposes of school enrollment in September 2017, the student is entitled to attend school in the district of the parent with whom he will reside on the last school day prior to October 16, 2017.

If the parents do not designate, or cannot agree on, the student’s likely residence on the last school day prior to the next October 16th, or if on that date the student does not end up residing with the parent previously indicated, the student should attend school in the district of domicile of the parent with whom he or she is *actually* living as of the last school day prior to the following October 16th.⁷⁹

iii. Determining Place of Residence Where Child Spends Time at Both Parents’ Homes Each Day

In one recent case, a shared custody arrangement resulted in the children “waking up in one home on any given day, and going to bed that same day in another.” Even under these circumstances, the court concluded that a single school district must be chosen as the place the students “resided” on the last school day prior to the preceding October 16. Reasoning that the place one “resides” is the place where a person “actually conduct[s] the activities of daily life,” the court ruled that the home the students *returned to upon pickup from school* was the place they “resided” on the determinative date (October 15), because it was there that they did their homework, ate supper, watched TV or played video games, relaxed and went to bed – as opposed to the home from which the students left for school that day, where they merely woke up and ate breakfast.⁸⁰

C. Narrow Rule Permitting Equitable Sharing of Costs Between Districts for Certain Students with Disabilities

While the above rules (which govern absent an agreement or court order between divorced/separated parents) generally determine a *single district* of enrollment and fiscal

responsibility, for certain students with disabilities, the regulations do not “preclude an equitable determination of shared responsibility for the cost of the student’s out-of-district placement” between the parents’ school districts, where fiscal responsibility cannot be determined under the general rules.⁸¹ This situation would arise in the case of a student with disabilities who *did not reside with either parent* during the relevant time period(s) because he or she was in a *residential placement*.⁸² The regulation permitting an equitable sharing of responsibility between school districts is not mandatory but appears to simply acknowledge the power of a court to craft an equitable remedy where applicable statutes and regulations yield no result.⁸³ Note that separate rules must also be taken into account in determining fiscal responsibility for students “in residential State facilities, or who have been placed by State agencies in group homes, skill development homes, private schools or out-of-State facilities.”⁸⁴ These students are discussed in Section 4 of this publication.

D. Temporary Residence of Divorced or Separated Parent

The rules described above for children of divorced or separated parents also apply to situations where one or both of the student’s parents *temporarily* resides in a school district, with the proviso that a district may require a parent or legal guardian to demonstrate that this temporary residence is not solely for purposes of the student attending school within the district of temporary residence.⁸⁵

E. Transportation in Case of Divorce or Separation

In the case of a student whose parents are divorced or separated and living in different school districts, the student’s right to receive transportation is based upon the location of the home (distance from school) of the parent domiciled *within* the school district that the student attends.⁸⁶

Students Residing with Guardian or with Person Applying for Guardianship:

As noted above, the general rule is that a student is entitled to attend school in the district in which his or her parent or guardian is domiciled. “Guardian” is defined in New

Jersey's school residency regulations as "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 unless it can be proven that the child does not actually live with the custodian."⁸⁷ In crafting the current regulatory definition to include persons with "custody" of a child, the NJDOE aimed to reflect "contemporary practice" in which "the terms 'custody' and 'custodian' – rather than the older 'guardianship' and 'guardian'... are used to denote the official placement, by order of a court of competent jurisdiction, of a child into the physical and/or legal care and control of a designated individual other than the parent."⁸⁸ The regulatory definition of "guardian," however, also includes a stipulation that in the case of residential custody orders, a student must actually live with the custodian to be entitled to attend the school district in which the custodian is domiciled.⁸⁹ This requirement -- that the student live with a residential custodian to attend school in the custodian's district -- differs from the fundamental rule applicable to biological or adoptive parents: a student is entitled to attend school in the district in which a parent is domiciled *irrespective of whether the student resides with the parent* (subject, of course, to the rules for divorced and separated parents discussed above).⁹⁰

In 2001, New Jersey expanded its guardianship laws to include "kinship legal guardianship," applicable to circumstances in which a relative or friend becomes guardian of a child whose parent is unable to care for him or her.⁹¹ This form of guardianship, which does not sever all rights of the child's birth parents, was added in response to legislative findings that "[t]here is an increase in the number of children who cannot reside with their parents due to the parents' incapacity or inability to perform the regular and expected functions of care and support of the child" and "[a]n increasing number of relatives, including grandparents, find themselves providing care on a long-term basis to these children without court approved legal guardian status."⁹² Birth parents of a child under kinship legal guardianship retain the obligation to pay child support and the right to

visitation; guardianship is effective until a child turns 18 or finishes high school (unless terminated earlier by the court).⁹³

Where a student *resides with* his or her guardian in a given school district, the district must accept the student as domiciled there and may not question the purpose of the guardianship⁹⁴ nor require the affidavits discussed in Section 3 of this publication with respect to “affidavit students.”⁹⁵

A. Applications for Guardianship

If a student comes from outside the state and is living with a person domiciled in the school district who will apply for guardianship (custody) of the student upon expiration of the mandatory six-month “waiting period” for state residency, the student is considered domiciled in the district and may enroll there during this waiting period.⁹⁶ If the application for guardianship is not made within a reasonable period of time following the expiration of the six-month waiting period, or if the guardianship application is denied, the student may be removed from the school district under the procedures discussed in Section 7 of this publication.⁹⁷ What will be considered a “reasonable period of time” to apply for guardianship was deliberately left unspecified in the regulations as it depends on particular circumstances.⁹⁸

“Affidavit student” status, discussed in Section 3 below, may serve as an alternative to guardianship where the student’s living arrangement results from “family or economic hardship” and the family does not wish to pursue legal custody.

B. Guardianship of Student with Disability over Age 18

At the age of 18, students are generally treated as independent adults under the education laws, including for purposes of the school residency rules as noted above. Some parents of students with severe disabilities, however, may apply for guardianship of their children at age 18 in order to maintain legal control over decision-making for their children, including

school-related decisions such as the timing of graduation.⁹⁹ (Note that alternative methods of supporting young adults with disabilities, such as power of attorney and supported decision-making, are preferred by many disability rights advocates over guardianship because they can afford greater student autonomy and independence.¹⁰⁰) Where a parent serves as guardian, the residency rules generally applicable to students under the age of 18 should continue to apply to the child with a disability.¹⁰¹ (Note that if a child with a disability over age 18 resides with his or her parent(s), the issue of a separate domicile would not arise in any event). Special rules, discussed in Section 4 of this publication, apply to students in state facilities and placed by state agencies in certain group facilities.

Section 3 -- Special Rules for Students Experiencing Family or Economic Hardship, Family Crisis or Homelessness

The general rules described above permit a student to attend school in the district in which the student's parent or guardian is domiciled or temporarily resides. Exceptions to these general rules have been created to enhance flexibility and school stability for students and families facing various circumstances of hardship. Because of the potential overlap of the following rules, it may be difficult to determine which rule applies in a given situation, and, if more than one rule applies, which might be most beneficial to the student. For example, in any circumstance involving relocation from a school district due to hardship, parents should consider whether the rules for "homeless" students, which are of broader application than the term "homeless" might at first suggest, may apply to allow continued attendance in the original school district.¹⁰² Prompt communication with school district personnel, including the homeless liaison, is recommended to ensure continuity of educational services and to avoid potentially costly claims of ineligible attendance.

Family or Economic Hardship - “Affidavit Student” Rules:

The rules discussed thus far have focused on situations in which a student resides with a parent or guardian, with the term “guardian” encompassing court-ordered custody arrangements. The “affidavit student” rules, applicable in situations of “family or economic hardship,” permit a student who is *living with a caregiver other than the parent or guardian* to attend school in the caregiver’s school district if the caregiver is “supporting the student without remuneration as if the student were his or her own child,” provided the following requirements are met:

- (1) The parent or guardian must file a sworn statement, accompanied by documentation to support its validity, 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 district resident solely for the purpose of receiving a free public education in the caregiver’s school district, and
- (2) As frequently required by the district board, the caregiver keeping the student must file a sworn statement that he or she is domiciled within the district, is supporting the student without compensation 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. The district may also require proof of domicile in the form of mortgage or tax bills to prove homeownership or a lease or sworn statement from the landlord if a tenant.¹⁰³

It is important to note that while the affidavit student rules permit a student to attend school in the district in which his or her caregiver resides, they do not require the student to attend school in that district.¹⁰⁴ Rather, the right to attend school in the caregiver’s district is elective with the parent -- the student’s parent or guardian retains the right to keep the student enrolled in the parent or guardian’s district of domicile,¹⁰⁵ without time limit.¹⁰⁶

A. What Types of Circumstances Qualify under the Affidavit Student Rules?

Case law provides guidance into the types of situations that qualify or fail to qualify under the affidavit student rules. It is important to understand that a family or economic hardship is not, by itself, enough to allow a student to attend school in a different school district: the affidavit student rules consist of a “two-part test”¹⁰⁷ -- there must be not only a family or economic hardship but the child’s parent or guardian must also be *incapable* of supporting or providing care for their child due to this hardship. There is no requirement that the hardship or the parent or guardian’s inability to support their child be financial in nature,¹⁰⁸ but the hardship must amount to more than ordinary scheduling conflicts experienced by most families. Parents or guardians wishing to use the affidavit student rules to allow a student to attend school in the caregiver’s district should give as much backup information as possible (when submitting the affidavit) to support the claim of parental inability to care for or support their child; mere conclusory statements such as “economic and personal problem” are insufficient and have been rejected in court proceedings.¹⁰⁹ A few examples of cases in which courts have found that the affidavit student rules applied – and have allowed students to attend the school district of their caregiver -- are as follows:

1. A five-year-old child who had lived since birth with her grandmother, who had cared for her as her own child, was permitted to attend school in the grandmother’s school district; the facts relied on by the court included: marital discord and bitter divorce of the parents, the mother’s need to care for an older brother with special needs as well as an older sister with emotional issues, and the mother’s financial strain and work schedule, including her inability to find morning care for the five-year-old. On appeal, the Commissioner of Education rejected the school board’s suggestion that allowing the family in this case to prevail would “establish a dangerous precedent for a new standard of ‘inconvenience.’”¹¹⁰
2. A teenage female student lived in the home of her grandmother, along with her mother, who had significant intellectual disabilities, weighed over 300 lbs., and received no government benefits. The student’s father had been killed in a holdup. When the student’s grandmother died, the student initially lived in one room with her mother and a much younger child and had to sleep on the floor; the student’s mother could not care for her younger child without the help of two other adults. The student then moved in

with an uncle, where she had to share sleeping quarters with two teenage boys. The student's aunt eventually allowed her to move in with her when her own daughter left for college. The student was allowed to attend school in the aunt's school district as the facts indicated that the student had no real home until she lived with her aunt and that the student's mother was incapable of caring for or supporting her.¹¹¹

3. A student lived in a certain school district until his parents separated; his mother moved to Korea at that time and had no further contact with the student. The student's father moved to a different school district but decided that it was best for the student to move in with his grandparents, who lived in the student's original school district. The court ruled that the student was entitled to attend school in the grandparents' district because the father had very long work hours, rendering him "virtually unavailable" for his son. The fact that the student remained on his father's health insurance and received a weekly allowance of \$30 from his father did not prevent the arrangement from qualifying under the affidavit student rules.¹¹²
4. A high school student became aggressive toward his mother and younger siblings after the death of his stepfather from cancer; he stole money from his mother, locked his young sister out of the house on a cold winter evening, and fought his young brother in a manner that frightened the mother. The grandmother took the student to her home in a different school district after witnessing him pushing his mother up against a wall. The mother also suffered serious financial problems resulting from her late husband's illness. The court allowed the student to attend the grandparents' school district under the affidavit student rules; the Commissioner of Education agreed that the circumstances rendered the student's mother incapable of providing care for him. The fact that the student later relocated to his biological father's home did not alter the result for the period at issue.¹¹³
5. A student's mother passed away when he was eight years old and his father was diagnosed with paranoid schizophrenia. The student moved to a two-family home along with his long-term babysitter and other members of the babysitter's family. The babysitter died one week after attempting to register the student in the school district to which they had relocated. It was then agreed that the student would remain with the babysitter's family members. Although the student's father refused to sign the required affidavit, he specifically asked the babysitter's sister-in-law for his son to be able to remain with her and wrote a statement allowing her to take him to and from school each day. The Commissioner of Education, in allowing enrollment in the school district to which the student had moved, stated:

*“The intent of the ‘affidavit student’ law is not now, and never has been, to deny an education to a child whose living arrangements may not be as contemplated by the statutory scheme when it is clear that the child has no home, or possibility of school attendance, other than with the non-parent district resident and that such resident is for all intents and purposes the sole caretaker and supporter of the child. Neither is its parental affidavit provision meant to act as a bar to a child who, due to particular circumstances, cannot produce such an affidavit but provides evidence that the underlying requirements of the law are being met. To hold otherwise harms a party the Legislature never meant to penalize, unreasonably places form over substance and overlooks the substantial State interest in ensuring the education of all its children.”*¹¹⁴

This reasoning is now reflected in the affidavit student regulations.¹¹⁵

By contrast, courts have denied the applicability of the affidavit student rules -- and therefore refused to allow the student to attend school in the caregiver’s district -- in the following scenarios:

1. Parents sent one of their sons, a freshman in high school, to live with an aunt and uncle in a nearby town because the mother had to spend a lot of time helping her elderly parents, who were in deteriorating health, and wanted her son to have more guidance in his high school years than she could provide him with. A younger son initially remained at home, as the parents were able to arrange for him to stay at a friend’s house after school until a parent came home, but ultimately moved to his aunt and uncle’s house as well. The court found that, although the family was “clearly suffering a family hardship which involves the serious illnesses of [the grandparents],” this hardship did not render the parents incapable of supporting or providing care for their sons. Because the parents both returned home each day by evening, the court described their situation as “a similar circumstance that many families with two working parents face every day.” While the court found it “commendable” that the parents wanted to provide their sons with greater supervision and care, this did not amount to an inability to care for them.¹¹⁶ The ages of the sons and the fact that the family was intact distinguishes this case from one discussed above involving a 5-year-old child and single mother.¹¹⁷

2. A 15-year-old student was sent to live with this grandmother in a nearby town because of pressure put on the student by his father to excel, which led the teenager to threaten to run away from home and harm himself. The student's parents were also experiencing marital discord. The student had previously attended a private religious school but was happier attending the public school in his grandmother's district. The State Board of Education found insufficient evidence on the record that the parents were "incapable" of supporting or providing care for their son; the fact that family strife at his parents' home had detrimental effects on the student did not in itself prove the parents' incapability.¹¹⁸ (Note that the parents' ability to afford private school for their son was not the basis for the result in this case.)

3. A student from Colombia, South America, came to live with his brother, a resident of New Jersey. The parents continued to reside in Colombia along with their two younger children. The brother asserted that the parents had no money to support the student and indicated that he sent his parents \$200 every two weeks. Affidavit student status was rejected, and tuition of over \$5000 was assessed, where the parents merely listed "economic and personal problem" and "security reason in Colombia" in their affidavit and failed to provide *evidence* of a hardship rendering them incapable of caring for or supporting the student.¹¹⁹

As noted above, in addition to demonstrating family or economic hardship, the parent or guardian must also file a sworn statement that the student is not residing with the caregiver "solely for the purpose of receiving a free public education" in the caregiver's school district. This rule, aimed at preventing school "shopping," was used to deny affidavit student status in a case in which the parents, who lived in India, submitted a written statement that their son was residing with an aunt and uncle in New Jersey "for his further studies."¹²⁰ The result in this case could have been avoided had the aunt and uncle obtained guardianship of the student through the necessary legal procedures¹²¹ – once guardianship is obtained, a student is entitled to a free public education in the guardian's district without the need to prove parental hardship or to justify the purpose of the custody arrangement.¹²² The option of having a caregiver obtain guardianship (custody) should be explored where an arrangement is expected to be long-term or permanent.¹²³

B. Financial Aspects of Affidavit Student Rules

As noted above, the affidavit student rules apply to situations in which a caregiver other than the parent or guardian keeps a student in his or her home and supports the student without remuneration (referred to in the statute as “gratis”) “as if the student were his or her own child.”¹²⁴ While there is no requirement in the affidavit student rules that a “family hardship” be financial in nature for the rules to apply,¹²⁵ regulations and case law in this area indicate that significant financial support of the student by a parent or guardian jeopardizes qualification under these rules.¹²⁶ While the regulations allow a parent or guardian to give “occasional gifts” or make “limited contributions, financial or otherwise, toward the student’s welfare,” the caregiver keeping the student may not receive from the parent or guardian any “payment or other remuneration for the regular maintenance of the student.”¹²⁷ “Regular maintenance” would appear to refer to everyday living costs, including funds for basics such as food, clothing and a share of housing costs. A sample affidavit student enrollment application published by the Commissioner of Education for school district use indicates that a parent or guardian may not pay the student’s caregiver for the student’s “actual housing or support.”¹²⁸ This rule limits the ability of a financially well-off parent or guardian to utilize the affidavit student rules without placing the financial burden of caring for the student on another caregiver.¹²⁹ Free attendance in the caregiver’s school district of residence will not be allowed in a scenario where a student resides with the caregiver but receives all necessary financial support from the parent or guardian.¹³⁰ The receipt of Social Security (or similar benefits) by the caregiver, however, on behalf of the student will not disqualify an arrangement under the affidavit student rules,¹³¹ nor will continued coverage of the student under the health insurance policy of a parent or guardian.¹³²

While it is unclear precisely how much financial support a parent or guardian may provide to his or her child consistent with the affidavit student rules – one case allowed affidavit student status despite a mother’s testimony that she paid about 30% of the student’s expenses while employed and about 20% of his expenses while unemployed¹³³ -- parents, guardians and caregivers are advised to present sufficient documentation at the time of enrollment to

demonstrate that the caregiver bears at least the majority of the student's living expenses,¹³⁴ without reimbursement from the parent or guardian.

C. Requirement that Caregiver Assume Obligations Pertaining to School Requirements

As noted above, an additional requirement for qualification under the affidavit student rules is that the caregiver with whom the student resides "assume all personal obligations for the student pertaining to school requirements."¹³⁵ This requirement appears to be focused on less frequently in case law than other aspects of the rules but should be kept in mind, as a lack of school-related participation by the resident caregiver may trigger inquiry by a school district. In one case, affidavit student status was denied where (among other factors) the grandmother with whom the student resided did no more than pick up the student from school each day; the grandmother did not know the name of the student's teacher and gave school documents to the student's mother.¹³⁶

D. Procedural Aspects of Affidavit Student Rules

i. Registration/Enrollment

The regulations governing student registration recognize that when a person other than the student's parent attempts to register the student in a district, there are two possible scenarios: (1) the person may be registering a student who resides in his or her home as an affidavit student, in which case the district "shall not demand or suggest that guardianship or custody must be obtained before enrollment will be considered,"¹³⁷ or (2) the person may be the student's guardian (have "custody"), in which case the district "shall not demand or suggest that [the] applicant ... produce affidavit student proofs."¹³⁸

If a board of education uses separate forms for affidavit student registration applications (rather than using a single application form for all types of enrollment) it must provide them to any non-parent or guardian attempting to register a student even if not specifically requested.¹³⁹

ii. Inability to Obtain Affidavits

A student shall not be denied enrollment in a school district because of an inability to obtain the sworn statement(s) described above if evidence shows that the underlying requirements of the law are being met.¹⁴⁰ The regulations further specify that a school district may not deny enrollment if “evidence is presented that the student has no home or possibility of school attendance” other than with the non-parent district resident who is acting as sole caregiver and supporter of the student.¹⁴¹

iii. Penalty for False Affidavits

Any person filing an affidavit with a board of education to enroll a student in school should be aware that there are penalties for filing a false affidavit. Under state law, a person is committing a disorderly person’s offense if he or she: 1) fraudulently allows someone else’s child to use his or her residence for enrollment in school when the person is not the primary financial supporter of the child; or 2) fraudulently claims that he or she has given up custody of his or her child to someone in another school district.¹⁴²

iv. Who May Appeal?

If a school district determines that a student is ineligible to attend as an “affidavit student,” any appeal of this determination of ineligibility is to be made by the caregiver with whom the student resides rather than by the student’s parent or guardian (who lives outside the school district).¹⁴³ This rule represents an exception to the general rules discussed in Section 7 of this publication, under which the student’s parent or guardian is the party to file any appeal.

While the affidavit student rules cover situations in which a student separates from his/her parent or guardian and is allowed to attend the school district of another caregiver, other rules, discussed below, cover situations in which a student relocates out of a school district along

with a parent or guardian but remains entitled to attend school in his or her original school district because of family crisis or homelessness.

“Family Crisis” Rules:

New Jersey has enacted legislation permitting a student who moves out of a school district in the middle of the academic year as a result of “domestic violence, sexual abuse or other family crises” to remain enrolled in his or her original school and receive transportation from the school district (provided the distance requirements for transportation are met) for the remainder of that school year without payment of tuition.¹⁴⁴ The regulations expand the term “family crisis” to include a “disruption to the family unit caused by death of a parent or guardian” and “an unplanned displacement from the original residence such as fire, flood, hurricane, or other circumstances that render the residence uninhabitable” while making it clear that other circumstances not specifically mentioned in the regulations may also qualify as “family crises.”¹⁴⁵ The student’s right to receive transportation from outside the district is a significant benefit of the family crisis rules that distinguishes these rules from other rules discussed above -- but note that the family crisis rules only allow continued enrollment for the remainder of a single school year.¹⁴⁶

A parent or guardian wishing to use the family crisis rules to allow their child to remain enrolled in his or her original school must *notify the child’s original school district of the move*. Upon notification, the school district may request supporting documentation about the reasons for the move, such as “newspaper articles, insurance claims, police or fire reports, notes from health professionals, custody agreements, or any other legal document.”¹⁴⁷ The student must be allowed to remain enrolled in the school district and receive transportation (if eligible based upon the distance of his or her current place of residence) while the school district reviews such documentation.¹⁴⁸

If a school district determines that the family's situation does not meet the family crisis criteria, it must notify the parent or guardian in writing -- this notification must: inform the parent or guardian of his or her right to appeal the decision to the executive county superintendent within 21 calendar days, state that if the appeal is denied, the parent may be assessed for transportation costs provided during the period of ineligible attendance, and state whether the parent or guardian is required to withdraw the student by the end of the 21-day period in the absence of an appeal.¹⁴⁹ In the event of an appeal, the executive county superintendent must make a decision regarding family crisis status within 30 calendar days of receiving the request and documentation; the original school district must provide continued enrollment and transportation during this period.¹⁵⁰ In the event of a negative decision by the executive county superintendent, a parent may make a further appeal to the Commissioner of Education, but in the case of such further appeal, the right to continued enrollment and transportation during the appeal period is not automatic.¹⁵¹ Should the Commissioner determine that the situation is not a family crisis, his or her decision shall on a case-by-case discretionary basis determine whether the parent, school district or State will pay the transportation costs incurred during the appeal process.¹⁵²

While the family crisis rules provide some relief to parents wishing to keep their child enrolled in his or her current school notwithstanding a move outside the district, this relief is, as noted above, limited to the remainder of a single school year. *Parents or guardians facing a move outside the district under conditions of hardship are advised to consider whether their child may be eligible for more substantial protection – and a potentially longer period of continued enrollment -- under the rules governing homeless students, discussed below.* Some circumstances that trigger application of the family crisis rules might also trigger a finding of homelessness; the family crisis regulations recognize the potential overlap and specify that the protections for homeless students take precedence, where applicable.¹⁵³

As discussed in Section 2 of this publication, school districts commonly have “grace period” policies permitting students to remain in the school district until the end of a school year without payment of tuition if they leave the district within a certain time period before the end of the year. Parents and guardians should inform themselves of such policies, which do not require the type of proof called for under the family crisis rules.

Homelessness Rules:

In any situation involving relocation out of a school district due to conditions of hardship, parents and advocates should consider the potential applicability of the protections for students experiencing homelessness – even though the word “homeless” may not, at first glance, appear to fit the family’s circumstances and may be a term that parents shy away from.¹⁵⁴ Under the federal McKinney-Vento Act¹⁵⁵ and New Jersey law,¹⁵⁶ the term “homeless,” for purposes of school enrollment, is not limited to the stereotype of individuals living in shelters or outdoors – it is defined as the lack of a “fixed, regular, and adequate residence” and includes persons living in substandard housing, in a hotel or motel, or in the residence of relatives or friends out of necessity because the family lacks a regular or permanent residence of its own.¹⁵⁷ The most common scenario of “homelessness” documented by the NJDOE is the situation in which a family moves in with another family – commonly known as being “doubled-up.”¹⁵⁸ Families living without basic utilities, such as a working kitchen, toilet, or shower, may be considered “homeless” for purposes of the education laws, including circumstances in which a family is limited to a floor or room in someone else’s home and lacks basic amenities.

The special protections for homeless students are aimed at ensuring school stability for students at risk of falling behind academically due to frequent moves. Federal rules allow for continued enrollment in the school district attended before becoming homeless (or the last school of enrollment), along with transportation, *throughout the entire period of homelessness (i.e., without time limit)*, presuming that remaining in such school is in the best interest of the student.¹⁵⁹ A multi-factor “best interest” determination may outweigh the presumption in

favor of this continued enrollment: deference is given to parental preference, and a student may be enrolled in the district in which he or she currently resides if this reflects the student's best interest.¹⁶⁰ (Note that New Jersey law includes a specific provision for students who have become homeless as a result of terrorism or natural disaster resulting in government declaration of a state of emergency or disaster.¹⁶¹)

The first step to be taken in triggering the special protections applicable to homeless students is for the parent or guardian to contact the "homeless liaison" of either the original school district or the school district to which the student has relocated.¹⁶² Homeless liaisons are responsible for assisting homeless families in a variety of ways, including, importantly, developing procedures to ensure school enrollment.¹⁶³ Immediate enrollment of homeless students must be allowed even absent the records normally required for enrollment.¹⁶⁴ Disputes regarding homeless status or school district of enrollment are initially handled by the executive county superintendent in consultation with the NJDOE's Homeless Education Coordinator or his or her designee with further appeals, if necessary, to the Commissioner of Education.¹⁶⁵ In the event of any dispute over school selection or enrollment, a homeless student must be immediately enrolled in the school in which enrollment (or continued enrollment) is sought by the parent, until the dispute is resolved.¹⁶⁶

Parents or guardians who seek the protection of the special rules for homeless students in conjunction with a homeless liaison are presumably protected from the risk of tuition liability for the period of any dispute, even if a determination is ultimately made that the family is not, in fact, homeless, or that the student should be enrolled in a school other than that sought by the parent.¹⁶⁷ By contrast, as discussed in Section 7 of this publication, a parent who moves out of a school district but continues to send his or her child to school in the district without notifying the district faces the risk of tuition charges for up to one year of ineligible attendance plus the time period of appeal.¹⁶⁸

As noted above, the rules governing homeless students overlap in certain circumstances with the “family crisis” rules and supersede the family crisis rules where applicable. While the most obvious overlap is in the family crisis category of “fire, flood or hurricane making a dwelling uninhabitable,” the death of a parent or guardian -- also an event constituting “family crisis” under the regulations – may also result in homelessness based on economic stress. In determining the best approach to ensuring enrollment in the preferred school district, parents and advocates should be aware that the protections for homeless students *lack a time limit on continued enrollment* in a student’s original school district, whereas the family crisis rules allow for continued enrollment only until the end of the current academic year. Where a family is uncertain about how long a student’s relocation will last (and especially in circumstances where the student’s new living conditions may be described as less than “adequate”¹⁶⁹), it is advisable to contact the “homeless liaison” of either the original school district or the school district to which the student has relocated to discuss potential protection under the rules governing homeless students.

One more point worth noting is the distinction between the “affidavit student” rules discussed above and the rules governing homeless students or students who have suffered a family crisis. The affidavit student rules presume that a student’s parent or guardian *remains domiciled in the original school district* but the student is living outside the district with a friend or relative (lacking the status of guardian). Where applicable requirements are met, the affidavit student rules permit the student to enroll in the nonresident caregiver’s school district – but the parent or guardian may instead choose to keep the student enrolled in the original school district in which the parent or guardian remains domiciled. The protections for homeless students and students who have suffered a family crisis, by contrast, allow students to remain enrolled in their original schools *even after the parent or guardian has relocated outside the school district*.

For detailed guidance on the legal protections governing homeless students, see ELC’s publication *Education Rights of Homeless Students: A Guide for Advocates*.¹⁷⁰

Section 4 -- School Stability Rules for Students in Out-of-Home Placements

Students Placed in Resource Family Homes:

As in the case of students experiencing homelessness, the school placement of students in foster care (referred to in New Jersey law as “resource family homes”¹⁷¹) is governed by federal law – notably, the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Fostering Connections Act), and the Every Student Succeeds Act (ESSA), which reauthorized and amended the Elementary and Secondary Education Act of 1965 (ESEA) (relevant provisions effective December 2016).¹⁷² The federal rules governing the educational placement of students experiencing homelessness and students in foster care are both grounded in the notion that improving school stability – i.e., allowing students to remain in the same school when they relocate -- will enhance academic success for students who move frequently (referred to as “highly mobile” students).¹⁷³ Detailed information about current federal law on educational stability for students in foster care, in useful Question and Answer format, is contained in a Non-Regulatory Guidance Document jointly issued by the US Department of Education and US Department of Health and Human Services in June 2016 (the “Federal Guidance”).¹⁷⁴

A unique aspect of the rules governing the education of students in foster care is the critical role played by state welfare agencies – in New Jersey, the Division of Child Protection and Permanency (CP&P) within the Department of Children and Families (DCF) – in making decisions regarding school placement. While the Fostering Connections Act governs state child welfare agencies, the more recent ESSA provisions impose complementary obligations on state and local educational agencies.¹⁷⁵ Under ESSA, state educational agencies must, as a condition to receiving federal funding, report certain steps they will take to ensure the educational stability of students in foster care, including providing assurances that (1) students will remain in their “school of origin” – defined as the school in which a child is currently enrolled -- in connection with a foster care placement, unless a determination is made that it is not in the student’s “best

interest” to continue to attend this school, and (2) if it is determined that remaining in the school of origin is not in the student’s best interest, students in foster care will be “immediately enrolled” in a new school, even if unable to produce the records normally required for enrollment. It should be noted that for students changing foster care placements, the “school of origin” is the school of current enrollment immediately prior to the new foster care placement. ESSA further mandates that local educational agencies will ensure that students in foster care needing transportation to the school of origin will promptly receive such transportation “for the duration of the time in foster care.”¹⁷⁶

In response to the Fostering Connections Act, which mandated state welfare agencies to ensure that students in foster care could remain in their current schools when placed in a new foster home,¹⁷⁷ New Jersey in 2010 enacted implementing legislation governing CP&P in this area. Under the New Jersey statute, whenever CP&P places any child in a resource family home, including a change in placement following the initial placement, “there shall be a presumption that the child shall remain in the school currently attended by the child,” pending a “best interest determination” that generally occurs within 5 business days of such placement.¹⁷⁸ In the event of special circumstances indicating that remaining in the current school is not in the best interest of the student and would present significant safety concerns or pose other significant and immediate detriment, the student may be immediately enrolled in the school district in which the resource family home is located.¹⁷⁹ The statute includes provisions for notice to parents and guardians and for court review of school placement determinations, consistent with the presumption in favor of continued enrollment in the current school.¹⁸⁰

The New Jersey statute lists the following factors to be considered by CP&P (and by a reviewing court) in making a best interest determination regarding school enrollment: (1) safety considerations, (2) the proximity of the resource family home to the current school, (3) the age and grade level of the child as it relates to the other best interest factors, (4) the needs of the child, including social adjustment and wellbeing, (5) the child’s preference, (6) the child’s

performance, continuity of education, and engagement in the school the child presently attends, (7) the child's special education programming if classified, (8) the point of time in the school year, (9) the child's permanency goal and likelihood of reunification, (10) the anticipated duration of the current placement, and (11) other factors to be determined by DCF regulation.¹⁸¹ The Federal Guidance lists similar factors, suggesting the following additional factors: (1) preference of the child's parent(s) or education decision-makers, (2) placement of the child's sibling(s), (3) availability and quality of the services in the school, (4) history of school transfers and how they have impacted the child, (5) how the length of the commute would impact the child based on the child's developmental stage, (6) whether the child is an English Learner and is receiving language services and, if so, the availability of those services in a school other than the school of origin. The Federal Guidance goes on to note that "[t]ransportation costs should not be considered when determining a child's best interest."¹⁸²

Under New Jersey law, fiscal responsibility for the education of students in foster care falls upon "the present district of residence of the parent or guardian with whom the child lived prior to the most recent placement in a resource family home"; this rule pertains to foster care placements on or after September 9, 2010.¹⁸³ Reference to the "present" district of residence of a parent or guardian means that fiscal responsibility for the student changes if the parent or guardian relocates while the student is in foster care. NJDOE has indicated that the education of a student in foster care, however, will not be disrupted by the relocation of a parent; services continue uninterrupted while questions of fiscally-responsible district are resolved.¹⁸⁴ The present district of residence of a parent is determined by reference to the "last school day prior to October 16," the date for determining state aid (discussed in Section 2 of this publication) -- if a parent moves after such date, fiscal responsibility for the student remains unchanged for the remainder of the school year.¹⁸⁵

ESSA directs local educational agencies to collaborate with the state or local child welfare agency regarding the provision and funding of transportation for children attending their schools of origin; transportation must be provided, in a cost-effective manner, for the duration

of a student's time in foster care.¹⁸⁶ The New Jersey statute enacted in 2010 in response to the Fostering Connections Act specifies that (1) CP&P is responsible for providing school transportation during the period that a determination is being made as to where a child will attend school (or while a court review is pending) and for the subsequent five school days, and (2) the school district responsible for tuition (described above) becomes responsible for the student's transportation within five days after being notified by CP&P where the child will attend school. The Federal Guidance and a NJDOE Frequently Asked Questions publication list a variety of cost-effective approaches to transportation, including the use of public transportation to the school of origin for students of appropriate age and skills.¹⁸⁷ It should be noted that, under the Federal Guidance, a school district responsible for transporting students in foster care under the above rules must do so even if it does not provide transportation to other students,¹⁸⁸ transportation must continue even during the period of any disputes regarding transportation costs, and responsible school districts are urged to consider making efforts to continue transportation until the end of the school year in the case of students exiting foster care during a school year.¹⁸⁹

Students Placed in Group Homes and Other Group Settings:

The Federal Guidance states that the requirement to ensure educational stability for children in "foster care" applies to "all children" placed away from their parents or guardians by child welfare agencies; "foster care" is defined very broadly for this purpose as "24-hour substitute care for children placed away from their parents or guardians and for whom the child welfare agency has placement and care responsibility. This includes, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and preadoptive homes."¹⁹⁰ This federal definition of "foster care" is much broader than the term "resource family home" to which the New Jersey educational stability statute applies; NJDOE, in its guidance for school districts, has indicated that students placed in group settings are likewise entitled to the educational stability protections of federal law.¹⁹¹

In practice, the application of educational stability rules to students placed in group settings may often be more complicated than the application of such rules to most students placed in resource family homes. Regulations defining the types of out-of-home placements made by CP&P list several types of group settings designed for children with specific challenges, including emotional or behavioral needs, drug and alcohol treatment needs, or physical disabilities.¹⁹² Often, when a residential placement is made for a student with such challenges, the student may have an IEP, in which case educational placement determinations must be made in accordance with the special education laws. In these cases, the best interest determination required by the school stability laws will require consideration of the student's special needs as well as the requirements of his or her IEP. The Federal Guidance indicates that students in foster care are 2.5 to 3.5 times more likely to be receiving special education services than their peers not in foster care.¹⁹³

While current policy emphasizes the rights of individuals to be educated and housed in the "least restrictive environment" (in broad terms, in a community setting with typical peers, rather than a segregated setting),¹⁹⁴ there are some students who, because of their circumstances, may require educational services on-site at their residential setting. For these individuals, the move to a new residential setting might appropriately be accompanied by a change in school setting. However, while such a change in educational programming may be typical and often appropriate, it should not be presumed. In New Jersey, educational programs must be provided to students housed in state facilities by the Department of Corrections, Department of Children and Families, Department of Human Services, and Juvenile Justice Commission.¹⁹⁵ New Jersey law does not include school stability rules specific to students leaving state facilities,¹⁹⁶ but does include rules for the transfer of all academic credits earned during residence at a state facility to the "school district identified upon discharge" or school district of residence,¹⁹⁷ in furtherance of assisting in transition.¹⁹⁸

For school funding purposes, the district of residence for students who are in residential state facilities,¹⁹⁹ or who have been placed by state agencies in group homes, skill development

homes, private schools or out-of-state facilities is the “present district of residence of the parent or guardian with whom the child lived prior to his most recent admission to a State facility or most recent placement by a State agency.”²⁰⁰ Regulations further define “present district of residence” by reference to two specific points in time: (1) the date of a child’s placement, for the first school year of the most recent placement; or (2) the last school day prior to October 16, for subsequent years in a placement. These determinations remain in effect for an entire year, consistent with the state funding scheme applicable to this subset of students.²⁰¹

Additional information about the education of students placed in out-of-home settings may be found in ELC’s publication *The Educational Rights of Students in Foster Care and Other Out-of-Home Placements: A Guide for Advocates*.²⁰² (This publication was issued prior to ESSA and should be used in conjunction with the Federal Guidance.) Individuals needing further assistance regarding the educational rights of students in out-of-home placements may also wish to contact the Educational Stability Liaison of the school district(s) in question. Contact information for New Jersey’s Educational Stability Liaisons is available on the NJDOE website.²⁰³

Section 5 -- Other Special Residency Rules

Special Rules for Military Families:

Special rules apply to situations in which a parent or guardian, who is a member of the New Jersey National Guard or a member of the reserve component of the U.S. armed forces, is called into active duty during a time of war or national emergency, causing a relocation of the student. In such circumstances, the family is essentially given two choices – the student may remain enrolled in the school district attended before the relocation, or the student may enroll in the school district of a caregiver with whom he or she is residing during the parent or guardian’s military service. Those two options are described in more detail below, followed by

a discussion of students whose parents serve in the military on a full-time basis and students who reside on federal property.

A. Right to Remain in Original School District during Active Military Service of Parent or Guardian

New Jersey statutes and regulations provide that student whose parent or guardian is a member of the New Jersey National Guard or a member of the reserve component of the U.S. armed forces may remain enrolled in (or be admitted to) the school district in which he or she was domiciled at the time the parent or guardian was ordered into active military service, regardless of where the child resides during the period of active duty.²⁰⁴ The school district is not, however, responsible for providing or funding transportation for these students living outside the district.²⁰⁵ Following the return of the parent or guardian from active military service, the student may remain enrolled in the school district through the end of the current school year (after which time eligibility depends on the student being domiciled in the district).²⁰⁶

B. Right to Attend School in Caregiver's School District during Active Military Service of Parent or Guardian

A student whose parent or guardian is in the New Jersey National Guard or reserve component of the U.S. armed forces may alternatively attend school, tuition-free, in the school district of a caregiver (other than parent or guardian) he or she stays with when his or her parent or guardian is ordered into active military service during war or national emergency.²⁰⁷ This eligibility extends until the end of the school year during which the parent or guardian returns from active military service.

The rule allowing children whose parents are in the National Guard or U.S. reserves to attend school in a caregiver's school district during their parents' active duty is similar to the affidavit student rule but does not require the proof of caregiver support/affidavits called for under such rule. Like the affidavit student rule, this rule for military families is permissive rather than

mandatory in nature – the parent or guardian may instead choose to have their child continue to attend school in the parent or guardian’s district of domicile.²⁰⁸

C. Children of Full-Time Military Parent/Guardian

While New Jersey statutes and regulations contain specific reference to parents or guardians who are in the *New Jersey National Guard or U.S. reserves*, a 2009 court decision holds that a student whose parent is in the military *full-time* also retains the right to enroll in the district of the parent’s domicile even if the parent and student live outside the district.²⁰⁹ The case involved tragic facts: a young father serving in the U.S. Army sent his adopted son, a student with disabilities, to live with his adoptive grandparents in Pennsylvania after the sudden death of his wife, who was the student’s mother. The father lived in army barracks and could not take the student with him after the student’s mother died, and the grandparents, after one school year during which the student attended school in Pennsylvania, paid for the student to attend a residential placement in New Jersey and sought to enroll him in a New Jersey school district. The court held the New Jersey school district in which the student’s father was domiciled responsible for the student’s education, reasoning that the absence of a specific provision referring to children of full-time active duty service members should not be construed against these students: eligibility to enroll in a given school district is preserved so long as a parent remains “domiciled” there under common law principles.

While the 2009 decision contains broad language suggesting that a given school district may remain responsible over a long period of time for the child of a full-time military parent, it should be interpreted with caution because of its unique facts, involving a *single* military parent who could not bring his disabled son along with him after his wife’s death (prior to her death, the student and his mother had moved to various locations where the father was stationed). The case, moreover, does not address the potential applicability of the “one-year rule” (discussed in Section 2 of this publication) in the context of military families.²¹⁰

D. Students Residing on Federal Property

New Jersey's school residency rules make it clear that students "living on federal property," such as students residing on a military base, are entitled to a free public education in New Jersey schools.²¹¹ Specific statutory provisions have been enacted to determine the school district responsible for the educating students living on federal properties spanning more than a single school district.²¹²

Residence within Two or More School Districts:

If a student's home is physically located within two or more school districts, the municipality that receives the majority of the property tax paid by the resident (or owner of a multi-unit dwelling) is the district of domicile for school attendance purposes. This rule also applies to a dwelling that bears a mailing address that does not reflect its physical location within a municipality. When property taxes are paid in equal amounts to two or more municipalities, and when there is no established assignment for students residing in those affected dwellings, the district of domicile will be determined through an assessment of the documentation submitted to demonstrate eligibility for enrollment in a school district,²¹³ discussed in Section 7 of this publication. No standard for that determination is set forth in the regulations.

Section 6 – Other School Options Outside the District of Residence

Although a student's eligibility to attend a school district is generally based on the various rules discussed above, students in some cases may apply to attend another public school district under New Jersey's Interdistrict Public School Choice Program or may apply for admission to a charter school or county vocational-technical school as described below:

- **Interdistrict Public School Choice Program:** Under this program, certain school districts open up seats for nonresident students; tuition is free, but transportation services are not guaranteed, and students must live within 20 miles of the "choice school" to be eligible for transportation services.²¹⁴ As of

the date of this publication, the Choice Program serves approximately 5000 students and includes 126 “choice” school districts. Detailed information about the program, including a list of all choice school districts and openings available in each district by grade, may be found at <https://www.state.nj.us/education/choice/>.

- Charter Schools: Under New Jersey law, charter schools are treated as separate Local Education Agencies (school districts) and may serve students living within a “region” of contiguous school districts.²¹⁵ While enrollment preference is given to students residing within the charter school’s region,²¹⁶ students from outside the region may also enroll in charter schools on a space-available basis, with funding provided by their home districts.²¹⁷ The school district in which a charter school student resides is responsible for providing transportation or aid in lieu of transportation so long as applicable distance requirements are met.²¹⁸ For more information, see <https://www.nj.gov/education/chartsch/allcharters.htm>.
- County Vocational-Technical Schools: New Jersey’s Vocational-Technical Schools are free public schools generally serving students from within a given county; tuition and transportation costs are the responsibility of the student’s district of residence.²¹⁹ These schools provide an additional option for students intending to pursue post-secondary education as well as for students intending to enter the workforce after high school. For more information, see <https://www.careertechnj.org/for-students-and-parents/>.

Section 7 -- Procedural Rules and Protections Governing School Enrollment and Residency Disputes

Note: The following discussion summarizes the procedural rules generally governing residency disputes. Variations on these rules, applicable in cases involving affidavit students,

family crisis, homelessness, and out-of-home placements, are noted in Sections 3 and 4 of this publication.

Applications for Enrollment in a School District:

To determine a student’s eligibility for enrollment in the district, a district board of education must accept documentation including (but not limited to) property tax bills, mortgages, signed letters from landlords, and other evidence of property ownership, tenancy, or residency; voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location; court orders, state agency agreements, and other evidence of court or agency placements or directives; receipts, bills, cancelled checks, insurance claims or payments, and other evidence of expenditures to support the student; medical reports, counselor or social worker assessments, employment documents, unemployment claims, benefit statements, and other evidence of circumstances demonstrating family or economic hardship or temporary residency; affidavits or other sworn attestations relating to affidavit student status or other statutory criteria for school attendance; documents pertaining to military status or assignment; and records or documents issued by government entities.²²⁰ A district must consider any documents or information presented by an applicant (parent, guardian, or caregiver) seeking to enroll a student.²²¹ **A district may not deny a student enrollment due to a person’s inability or failure to produce a particular document or subset of documents, but instead must consider the totality of the information submitted by the applicant.**²²²

It is unlawful for a district to require or request as a condition of enrollment information or documents protected from disclosure by law or pertaining to criteria that are not legitimate for determining eligibility to attend school. These documents include (1) income tax returns, (2) documentation or information relating to citizenship or immigration/visa status (except F-1 visas),²²³ (3) documentation or information relating to compliance with local housing ordinances or conditions of tenancy,²²⁴ and (4) Social Security numbers.²²⁵ These items may, however, be considered by a board of education if voluntarily submitted by an applicant for

enrollment.²²⁶ Moreover, although a district may not *require* the submission of income tax returns as a condition for enrollment, a parent's *failure* to produce income tax returns may be considered by a court as evidence in a residency dispute.²²⁷

A Fact Sheet jointly issued by the civil rights offices of the US Department of Justice and US Department of Education states that school districts may not require parents to submit state-issued identification cards or driver's licenses to establish residency "where such a requirement would unlawfully bar a student whose parents are undocumented from enrolling in school."²²⁸ Legal action by the New Jersey ACLU has resulted in school districts revising their registration forms and websites so as to remove the suggestion that parent drivers' licenses must be submitted for enrollment.²²⁹ In the case of a dispute regarding eligibility to enroll or to remain enrolled in a school district, however, a New Jersey statute enacted in 2015 allows school districts to request and receive the names and addresses of parents and guardians from the New Jersey Motor Vehicle Commission.²³⁰

A district cannot deny a student enrollment or attendance based upon absence of a certified copy of a birth certificate or other proof of a student's identity, although state law requires such documentation to be provided within 30 days of enrollment.²³¹ When enrollment in the school district, attendance at school, or the receipt of educational services in the regular education program appears inappropriate, a district cannot deny enrollment or attendance because a student's prior educational record is not immediately produced. The applicant must be advised, however, that the student's initial educational placement may be revised upon the district's receipt of records or further assessment of the student.²³² A district may not deny a student enrollment due to a lack of student medical information but may defer actual attendance of a student for not complying with immunization rules.²³³ A district may not condition enrollment or attendance on advance payment of tuition when enrollment is denied and intent to appeal is indicated or when enrollment is provisional and subject to further review or information.²³⁴

When seeking enrollment of a child, the parent, guardian or caregiver should contact the district board of education to determine in which local school the student should be enrolled and where enrollment takes place. Each district must have sufficient registration forms and sufficient numbers of trained registration staff available to ensure prompt determinations of eligibility and enrollment.²³⁵ Enrollment applications may be taken by appointment, but appointments must be promptly scheduled and not unduly defer a student’s attendance at school.²³⁶ Each district must also have a clearly identified district-level school administrator available to assist applicants experiencing difficulties with the enrollment process.²³⁷

School districts must use registration forms provided by the State Commissioner of Education or locally-developed forms that are consistent with the state forms.²³⁸ State forms, which include detailed explanations of the legal requirements for enrollment, are currently available online at <https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word)(revised 2010) and are included in the Appendix to this publication; parents are advised to review these forms in advance especially if there are questions as to the proper district of enrollment. In connection with the registration process, school districts are obligated to identify information suggesting that an applicant may be homeless so that the special procedures applicable to homeless students may be implemented.²³⁹ For a discussion of the enrollment of “affidavit students,” see *Procedural Aspects of Affidavit Student Rules* in Section 3 of this publication.

Initial Determinations of Eligibility or Ineligibility:

Once an application for enrollment is submitted, the district must make an initial determination of eligibility; the regulations state that enrollment must take place immediately “except in cases of clear, uncontested denials.”²⁴⁰ Several different scenarios are possible in connection with applications for enrollment:

Where an applicant has provided incomplete, unclear, or questionable information –
enrollment must *still take place immediately*, but the applicant must be notified that the

student will be removed from the district if defects in the application are not corrected or an appeal to the Commissioner of Education is not filed within the applicable 21-day period. State forms issued by the Commissioner of Education include a “NOTICE OF DEFECT IN APPLICATION/POTENTIAL INELIGIBILITY,” which informs the parent, guardian, or caregiver of the evidence/documentation still needed to establish eligibility and provides a deadline for submission of such additional materials.²⁴¹ The form indicates that if the enrollment application is not corrected within the specified time, an additional notice will be sent indicating that unless an appeal is filed with the Commissioner of Education, the student will be removed from school.

If a student appears to be ineligible based on information provided in the initial application – the school district must issue a preliminary written notice of ineligibility, including an explanation of the right to appeal to the Commissioner of Education. *Enrollment must still take place immediately if the applicant clearly indicates disagreement with the school district’s determination and an intent to appeal to the Commissioner.*²⁴² If a student is enrolled under these circumstances, the student may be removed without a hearing before the district board of education if no appeal to the Commissioner is filed within the 21-day period after the notice.²⁴³ If, however, an appeal to the Commissioner is filed, the student must be permitted to continue to attend school during the time that such appeal is pending.²⁴⁴ (As discussed below, persons filing an appeal risk tuition charges if the appeal is lost or abandoned.)

Where the school district denies an application for enrollment and no intent to appeal is indicated – the child will not be enrolled in the school district. In this circumstance, the parent, guardian or caregiver must be advised of their obligation to comply with the compulsory education laws. In the case of a child between the ages of six and 16, the age range to which compulsory education applies in New Jersey,²⁴⁵ applicants will be asked to complete a written statement indicating that the child will be attending school in another school district or nonpublic school or receiving instruction elsewhere than at a school. Absent such written statement, the school district which has denied enrollment must notify the

school district of the child's actual domicile/residence or the Department of Children and Families of a potential instance of neglect by reason of the applicant's failure to provide the child with an education.²⁴⁶

Notices of Ineligibility:

Consistent with the fundamental right of due process that applies in connection with public education,²⁴⁷ New Jersey requires specific written notice to be provided by a school district when a student is found ineligible to attend school there, both at the initial application stage and after a period of enrollment. Notices of ineligibility consistent with State forms issued by the Commissioner (currently available online at

<https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and

<http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) and in the

Appendix to this publication) must be provided both in English and in the applicant's native language and directed to the address at which the applicant claims to reside.²⁴⁸ (The term

"applicant" is defined to include a parent, guardian, or resident supporting an affidavit student who seeks to enroll a student in a school district, in addition to adult students and unaccompanied homeless youth who seek to enroll.²⁴⁹) Notices of ineligibility must also

include: a clear description of the reasons and statutory basis for ineligibility (sufficient to allow the applicant to understand the basis for the district's decision and decide whether to

appeal); a clear statement of the applicant's right to appeal to the Commissioner within 21 days of the notice date (including an informational document describing how to file an

appeal); a clear statement of the student's right to attend school during the 21-day period during which an appeal may be made to the Commissioner, including a statement that the

student will not be permitted to attend school beyond this day if an appeal is not filed; a clear

statement of the student's right to continue to attend school while an appeal is pending; a

clear statement that if the applicant loses or abandons his or her appeal, tuition may be

assessed for a period of ineligible attendance, including the initial 21-day period for appeal

and the period during which the appeal was pending; a clear statement of the approximate

tuition rate that may be assessed; and the name of a contact person in the district who can

assist in explaining the notice. In the case of removal based on a student's move from the district, notices of ineligibility must also provide information as to whether school district policy permits continued attendance, with or without tuition, for students who move from the district during the school year.²⁵⁰

Procedures and Protections for Currently Enrolled Students:

A. Residency Investigations

New Jersey regulations allow school districts to investigate the residency of students already enrolled in the school district and to periodically request revalidation of eligibility (for example, by requiring submission of current leases or utility bills) to determine whether there are students enrolled in the district who may be "ineligible for continued attendance due to error in initial assessment, changed circumstances, or newly discovered information."²⁵¹ In this regard, New Jersey school districts routinely employ residency investigators who conduct surveillance operations in the case of students suspected of ineligible attendance.²⁵² Techniques employed by these investigators include parking near residences claimed to be the residence of the student to see if the student and parent enter or leave the residence, as well as following students and parents to determine place of residence.²⁵³ School districts also visit purported places of residence to observe whether it appears that families actually live there, checking for items like beds, furniture and clothing;²⁵⁴ in some circumstances, it may be the parents who seek home inspection to establish residency. Residency investigations may also involve the use of online databases.²⁵⁵

A recent residency case provides a cautionary note to parents considering using a relative's address to gain admission to a preferred school district.²⁵⁶ In that case, a teacher, as part of a social studies lesson requiring students to memorize their home addresses, showed a first grade student a picture of a house using Google Earth, and the first grader told the teacher that this was not her home, but was her grandmother's house instead. The student described the location of her actual home to the teacher and told the teacher that she was not supposed to speak about this. The school district had a policy requiring teachers, as "the eyes and ears of

the school,” to report any suspected residency issues, and a residency investigation was commenced. Ultimately, the parent’s argument that a first grader’s comments should not be relied upon failed, and the parent was held liable for over \$20,000 in tuition.²⁵⁷

B. Preliminary Notices of Ineligibility and Board Hearings

No one person, such as a principal or superintendent, can end a student’s enrollment in a school district; instead, a school administrator who finds that a student is ineligible to attend school in the district must apply to the board of education for the student’s removal.²⁵⁸

Removal of *currently enrolled* students involves an additional step not present in the case of initial applications for enrollment; namely, the right to a hearing before the district board of education prior to the school district’s final determination. In this regard, the district must first issue a “preliminary” notice of ineligibility (meeting the requirements for notice of ineligibility described above), and the parent, guardian, caregiver, or adult student must be informed of his or her entitlement to a board hearing.²⁵⁹

At a board hearing, the student’s parent, guardian or caregiver (or the adult student) will be given the opportunity to prove that the student is domiciled in the school district, meets the requirements for affidavit student status, or meets one of the other legal entitlements for enrollment discussed in this publication. Proof may include supporting documents as well as witnesses who can testify about residency or about family or economic hardship. While boards of education may conduct eligibility hearings using a board committee which makes a recommendation to the full board, no student may be removed without a vote of the full board at a public board meeting.²⁶⁰

If the parent, guardian, caregiver or adult student does not prevail at the board hearing, or fails to respond to the preliminary notice or appear for a hearing, the board of education may then issue a final determination of ineligibility, triggering the 21-day period for appeal to the Commissioner of Education.²⁶¹ Notices of ineligibility, as discussed above, must state the important rule that a student has the right to continue to attend school for the 21-day period

during which an appeal may be made and for the period during which an appeal is pending (subject to the assessment of tuition if the appeal is lost or abandoned).²⁶²

Appeals to the Commissioner of Education:

A parent, guardian, caregiver or adult student has the right to appeal to the Commissioner of Education any board of education decision denying a student admission or removing a student on residency grounds. *However, when an appeal challenges a board of education's affidavit student eligibility determination, the caregiver/district resident with whom the student resides must file the appeal, rather than the student's parent or guardian.*²⁶³

The general rule is that appeals of school residency decisions must be filed within 21 days of a board of education's decision; so long as this deadline is met, the student maintains the right to continue to attend school during the pendency of the appeal. While appeals may be filed after expiration of the 21-day period, the student's right to attend school during the appeal period is not guaranteed but requires "emergent relief."²⁶⁴

There are two ways in which an appeal to the Commissioner may be initiated: (1) by filing and serving a standard Petition of Appeal,²⁶⁵ or (2) in the case of someone acting without legal representation (a "*pro se* petitioner"), by submitting a letter petition.²⁶⁶

A letter petition from a *pro se* petitioner will be accepted so long as it contains the following information:

1. The name, address, telephone number and, if available, fax number and email address of the person filing the appeal (known as the "petitioner");
2. The name of the board of education that has denied admission to the student or attempted to remove the student from school;
3. A clear indication that the petitioner is appealing a determination of ineligibility to attend school in the district based upon residency or domicile and the date of the district's decision; and

4. A signed statement, which need not be notarized, that the claim of entitlement is based upon facts that are true to the best of the petitioner's knowledge and belief, and that the petitioner understands that he/she may be assessed tuition if the Commissioner finds the student ineligible for free education in the district or if the claim is abandoned or withdrawn.²⁶⁷

A copy of the school district's written determination of ineligibility should be attached to the letter petition if possible. If the petitioner does not include a copy of the written determination of ineligibility, the board of education must include a copy with its response to the petition, which is referred to as the "answer."²⁶⁸

A sample letter petition prepared by the Commissioner of Education, along with directions for appeal, may be found in the Appendix to this publication and are currently available online at <https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) under the headings "PRO SE RESIDENCY APPEAL" and "DIRECTIONS FOR APPEALING A LOCAL BOARD OF EDUCATION'S RESIDENCY DETERMINATION TO THE COMMISSIONER OF EDUCATION." The Bureau of Controversies and Disputes may be reached by telephone at (609) 376-9079 to answer questions about filing. Letter petitions should be mailed to the following address:

Commissioner of Education
c/o Director, Office of Controversies and Disputes
New Jersey Department of Education
100 Riverview Plaza
P.O. Box 500
Trenton, NJ 08625-0500

To speed up filing, letter petitions may be faxed to the Commissioner at (609) 292-4333, but a hard copy of the petition must also be sent in by mail. It is not necessary for a pro se petitioner to serve a copy of the petition on the board of education, as the Office of Controversies and Disputes will fax the petition and its attachments to the board of education upon receipt, along with notice directing the board that the child or children must be permitted to attend school

pending the appeal.²⁶⁹ Pro se petitioners may, however, serve the petition on the board of education if they choose to do so.²⁷⁰ (Petitioners represented by counsel must do so.²⁷¹) As of the date of publication, amendments to the NJDOE regulations have been proposed which will, when adopted, allow for electronic filing of documents with NJDOE.²⁷²

If the board of education has not already done so, it must admit the child(ren) to school immediately upon receipt of a petition of appeal. The board will then have 20 days from the date of receipt of the petition to file its answer (unless the board seeks an extension with the consent of the petitioner or by showing good cause).²⁷³ Once the board's answer is served on the petitioner and filed with the Commissioner, the case will be scheduled for a hearing before an administrative law judge, who makes an initial decision. The case then goes to the Commissioner for a final decision.²⁷⁴ Hearings regarding eligibility to attend school based on residency or domicile must be handled on an expedited basis.²⁷⁵

It should be noted that the parent, guardian, caregiver or adult student disputing a school district's determination of ineligibility has the burden of proving eligibility, by a preponderance of the evidence, on appeal to the Commissioner.²⁷⁶ If, for example, a school district's surveillance indicates that a student lives at a place other than that claimed by the parent, the parent must put forth evidence in the form of credible witness testimony or documentation sufficient to outweigh the evidence submitted by the district's investigators.²⁷⁷

Tuition Assessments for Ineligible Attendance:

A school district's determination of ineligibility may result in the assessment of tuition against a parent, guardian, caregiver or adult student in cases in which no appeal of the determination is filed with the Commissioner or the appeal is lost or abandoned.

- Where a currently-enrolled student is found ineligible to attend by the school district (including students who have enrolled notwithstanding a preliminary notice of ineligibility at the time of application) and the parent, guardian, caregiver or adult

student does not file an appeal of this ineligibility determination, the assessment of tuition is limited to a period of up to one year of a student's ineligible attendance, including the 21-day period for appeal.²⁷⁸

- Where a parent, guardian, caregiver or adult student appeals a school district's ineligibility determination to the Commissioner, and either loses or abandons the appeal (other than in connection with a settlement),²⁷⁹ tuition may be assessed for the period during which the hearing and decision on appeal were pending, and for up to one year of the student's ineligible attendance prior to filing the appeal, including the 21-day period to file the appeal.²⁸⁰

Tuition is calculated on a per-student basis based on the student's grade/program category in accord with complex regulations. Notably, the individual student's record of daily attendance does not affect the calculation of tuition due.²⁸¹ In one recent case involving a high school student, the tuition charged to a parent for a period of 45 days of ineligible attendance was approximately \$3500, based on a per-day charge of approximately \$78;²⁸² in another case, tuition of over \$10,000 was charged for 112 days of ineligible attendance by a high school student, based on a per-day charge of approximately \$93.²⁸³ Parents with multiple children found ineligible to attend school in a district face even higher costs – in one recent case, tuition of \$55,000 was assessed for a mother's five children.²⁸⁴ The school district or the Commissioner may make an equitable determination that tuition will not be assessed for all or any part of the period of a student's ineligible attendance in the district "when the particular circumstances of a matter so warrant." In making a determination to waive tuition, the school district or Commissioner must consider whether the ineligible attendance was "due to a school district's error."²⁸⁵ The "good faith of a parent is an appropriate consideration for reducing the amount of tuition owed"; another consideration is "whether the school district misinformed a parent or caretaker with respect to residency requirements."²⁸⁶

ENDNOTES

¹ Persons who are eligible for a free public education include all students between the ages of five and 20, N.J.S.A. 18A:38-1, students with disabilities between the ages of three and 21, N.J.A.C. 6A:14-1.1(c)(1), and all three and four-year-old students eligible for free preschool pursuant to N.J.A.C. 6A:13A.

² N.J.S.A. 18A:38-1(a).

³ N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:22-3.2(c).

⁴ N.J.S.A. 18A:38-1(b).

⁵ N.J.S.A. 18A:38-1.1; N.J.A.C. 6A:22-3.2(h).

⁶ See N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.5 (discussed in detail in ELC's publication, *Education Rights of Homeless Students: A Guide for Advocates*, http://www.edlawcenter.org/assets/files/pdfs/student%20residency/Education_Rights_of_Homeless_Student.pdf).

⁷ N.J.S.A. 30:4C-26b.

⁸ N.J.S.A. 18A:38-3.1; N.J.A.C. 6A:22-3.2(f). See also *A.M.S. o/b/o A.D.S. v. Board of Educ. of the City of Margate*, 409 N.J. Super. 149 (App. Div. 2009) (fact that statute expressly allows continued attendance in school district for children of military guardspersons and reservists does not mean that children of full-time active duty personnel are precluded from continued attendance at school district where facts demonstrate parent's continued domicile in that district).

⁹ N.J.S.A. 18A:38-7.7 *et seq.*; N.J.S.A. 18A:38-7.10 *et seq.*; N.J.A.C. 6A:22-3.2(g).

¹⁰ N.J.A.C. 6A:22-3.1(b).

¹¹

http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf,
Spanish version at
http://www.edlawcenter.org/assets/files/pdfs/publications/Rights_SpecialEducation_Guide%20TL.pdf.

¹² N.J.S.A. 18A:38-9.

¹³ N.J.S.A. 18A:38-11.

¹⁴ N.J.S.A. 18A:38-3(a); N.J.A.C. 6A:22-2.2 (discretionary admission of nonresident students).

¹⁵ See N.J.S.A. 18A:7F-45 (defining "resident enrollment" to include children of teaching staff).

¹⁶ N.J.A.C. 6A:22-3.1(a); N.J.S.A. 18A:38-1(a).

¹⁷ Matter of Unanue, 255 N.J. Super. 362 (1991), *aff'd*, 311 N.J. Super. 589 (App. Div. 1998), *cert. denied*, 157 N.J. 541 (1998), *cert. denied sub. nom.*, Unanue-Casal v. Goya Foods, Inc., 526 U.S. 1051 (1999).

¹⁸ N.J.A.C. 6A:22-3.1(a)(1). In applying this general rule in the context of guardians, reference must be made to the definition of “guardian” contained at N.J.A.C. 6A:22-1.2, which excludes circumstances in which the student does not actually live with a residential custodian. *See Students Residing With Guardian or With Person Applying for Guardianship* below.

¹⁹ Board of Educ. of the Borough of Lodi v. Board of Educ. of the Twp. of Rochelle Park, 2016 WL 3361007 (N.J. Adm. June 10, 2016), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2016/jul/267-16.pdf> (Comm’r of Educ. July 21, 2016); A.H. o/b/o B.H.G. v. Twp. of West Orange Board of Educ., 2015 WL 8490711 (N.J. Adm. July 10, 2015), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2015/aug/266-15.pdf> (Aug. 11, 2015) (where student’s mother relocated out of school district during school year, student became ineligible to attend school district even if she spent nights at grandmother’s home in school district).

²⁰ Matter of Unanue, *supra* (initial Superior Court opinion). Under the “one-year rule,” discussed below in connection with temporary residence, a student is deemed to be domiciled in a school district when his or her parent or guardian has resided there on an all-year-round basis for one year or more “notwithstanding the existence of a domicile elsewhere.” N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:22-3.1(a)(4). This bright-line rule, limiting the fiscal responsibility of a school district for students living elsewhere, does not alter the general concept that a person may have only one “domicile” at a time.

²¹ V.A. and J.A. o/b/o minor children v. Board of Educ. of Twp. of South Hackensack, 2012 WL 682112 (N.J. Adm. Jan. 23, 2012), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2012/mar/83-12.pdf> (Comm’r of Educ. March 5, 2012) (parents argued unsuccessfully that New Jersey education system should be reformed to allow those who own properties in multiple school districts to send their children to any district in which they pay taxes).

²² *See* D.D. o/b/o N.D. v. Board of Educ. of Twp. of Belleville, 2006 WL 3251439 (N.J. Adm. Oct. 12, 2006), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2006/nov/409-06.pdf> (Comm’r of Educ. Nov. 27, 2006), *aff'd*, <https://www.nj.gov/education/legal/sboe/2007/apr/sb55-06.pdf> (State Board of Educ. April 4, 2007) (while student’s mother stayed in boyfriend’s apartment in a different school district “extensively” during a period of 1 ½ years, she remained domiciled in the home of the student’s grandparents in the school district; proof included credible testimony as well as use of address in school district for important mail, driver’s license, registration and auto insurance, voter registration, court papers, credit card statements, and tax returns); J.C. o/b/o J.C. v. Board of Educ. of City of Linden, https://njlaw.rutgers.edu/collections/oal/html/initial/edu07290-14_1.html (N.J. Adm. May 29, 2015), *aff'd* and remanded, <https://www.nj.gov/education/legal/commissioner/2015/jul/232-15.pdf> (Comm’r of Educ. July 8, 2015) (referring to school district having a “6-point system” for determining residency with the student’s mother only getting 1 point; incomplete lease and blank personal check were insufficient proof of domicile).

²³ N.J.A.C. 6A:22-3.4 (proof of eligibility); <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) (2010) (forms issued by

Commissioner of Education for school districts and included in Appendix to this publication); N.W. o/b/o T.W. v. Board of Educ. of Borough of Pine Hill, 2015 WL 8012807 (N.J. Adm. Aug. 10, 2015), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2015/sep/300-15.pdf> (Comm'r of Educ. Sept. 24, 2015) (father had no documentation indicating mailing address or residency for him or his son in New Jersey).

²⁴ N.J.S.A. 18A:38-1.3(a)-(b).

²⁵ Lyon v. Glaser, 60 N.J. 259 (1972).

²⁶ K.L. and K.L. o/b/o M.L. and C.L v. Board of Educ. of Borough of Kinnelon, 2008 WL 2026047 (N.J. Adm. April 24, 2008), *aff'd*, 2008 WL 4861456 (Comm'r of Educ. July 22, 2008), *aff'd*, 2010 WL 6747 (Sup. Ct. App. Div. Jan. 4, 2010).

²⁷ Board of Education of Twp. of Plumsted v. E.J.M. and W.L.M., 2000 WL 33115488 (N.J. Adm. Dec. 8, 2000), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2001/jan/26-01.pdf> (Comm'r of Educ. Jan. 26, 2001) (parents held liable for tuition where they delayed moving into their new home because sellers' new home was not ready).

²⁸ K.L. and K.L. o/b/o M.L. and C.L v. Board of Educ. of Borough of Kinnelon, *supra*. See also M.B. and C.B. o/b/o J.B. v. Board of Educ. of the Borough of Kinnelon, <http://www.nj.gov/education/legal/commissioner/2010/may/135-10.pdf> (Comm'r of Educ. May 4, 2010), *rev'g* 2010 WL 675202 (N.J. Adm. Feb. 11, 2010) (failure to physically move into school district precluded finding of domicile; business administrator of school district "explained that owning property in a district and paying taxes thereon, in and of itself, is not a sufficient basis for a free public education in that district").

²⁹ Matter of Unanue, *supra* (intention to abandon previous domicile is critical in establishing new domicile); A.P., Sr. o/b/o D.K. v. Board of Educ. of Bordentown Regional School Dist., 2006 WL 3830468 (N.J. Adm. Dec. 5, 2006), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2007/jan/28-07.pdf> (presence of "For Sale" sign at property that school district claimed was guardian's domicile negates this characterization; guardian had no intention to remain there).

³⁰ Matter of Unanue, *supra* (initial Superior Court opinion); see also A.T. and L.T. o/b/o A.T. v. North Hunterdon-Voorhees Regional Board of Educ., 2015 WL 303172 (N.J. Adm. Jan. 14, 2015), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2015/mar/84-15.pdf> (Comm'r of Educ. March 6, 2015)(parents' domicile remained in school district during father's work assignment in Netherlands; domicile in district was not replaced by new domicile); M.L. o/b/o G.R.C.L. v. Board of Educ. of Twp. of Belleville, 2008 WL 4712790 (N.J. Adm. Sept. 26, 2008), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2008/nov/448-08.pdf> (Comm'r of Educ. Nov. 12, 2008) (place where parents temporarily resided did not replace previous domicile where they had no intention to stay there; an "old domicile is not lost until a new one is acquired").

³¹ A.P., Sr. o/b/o D.K., *supra*. See also B.F.-H. o/b/o A.C. v. Board of Educ. of Woodbridge Twp., 2009 WL 2988163 (Comm'r of Educ. Feb. 9, 2009) (grandmother, guardian of student, remained domiciled in district in which she had lived for 29 years despite extended absence occasioned by need to demolish home damaged by fire and build new home on the premises).

³² An example is Bloomfield Board of Education Policy 5111, which reads:

“Children Who Anticipate Moving to or from the District

A nonresident child otherwise eligible for attendance whose parent(s) or legal guardian(s) anticipates district residency and has entered a contract to buy, build or rent a residence in this district may be enrolled without payment of tuition for a period of time not greater than twelve weeks prior to the anticipated date of residence. If any such pupil does not become a resident of the district within twelve weeks after admission to school, tuition will be charged for attendance commencing the beginning of the thirteenth week and until such time as the pupil becomes a resident or withdraws from school.

Pupils whose parent(s) or legal guardian(s) have moved away from the school district on or after April 15 and pupils in good disciplinary standing (as determined by the judgment of the Superintendent or his/her designee) in grades six, eight and twelve will be permitted to finish the school year in this district without the payment of tuition at the superintendent’s judgment.”

The Cherry Hill School District, by contrast, has a less generous grace period for future residents; Board of Education Policy 5118 allows only 30 calendar days of attendance and requires prepayment of tuition for this period, with the tuition being reimbursed “[i]f the child does become a resident of the district by the end of the 30 calendar day period.” In the case of students moving out of the district, Cherry Hill allows students in grades K-11 to remain enrolled for the remainder of a school year without payment of tuition if they move out after May 1; seniors in high school are allowed to remain without tuition if they move after January 1; and students moving at other times during the school year are entitled to remain until the end of a quarter but with tuition charged from the date of their move until the end of such quarter.

³³ See, e.g., A.H. o/b/o B.H.G. v. Twp. of West Orange Board of Educ., 2015 WL 8490711 (N.J. Adm. July 10, 2015), *aff’d*, <https://www.nj.gov/education/legal/commissioner/2015/aug/266-15.pdf> (Aug. 11, 2015) (referring to “senior rule” allowing parent of graduating senior to petition superintendent for waiver allowing student to remain in district through graduation).

³⁴ Under N.J.A.C. 6A:22-4.2(b)(7), if removal of a student is based on the student’s move from the school district, the notice of ineligibility must provide information on “whether school district policy permits continued attendance, with or without tuition, for students who move from the school district during the school year.”

³⁵ K.L. and K.L. o/b/o M.L. and C.L v. Board of Educ. of Borough of Kinnelon, *supra*, involved such a situation: the parents signed an affidavit which referred to the school district policy requiring “tuition after a five week grace period for families awaiting the completion of construction on their homes” but failed to move into the school district within the grace period.

³⁶ N.J.A.C. 6A:22-1.1(c).

³⁷ M.L.P. o/b/o C.L.P v. Board of Educ. of Twp. of Bloomfield, 2008 WL 6839287 (Comm’r of Educ. Dec. 29, 2008)(“to the extent that the statutory scheme focuses ... on where a child is *actually living*, it is to *expand* the child’s entitlement beyond the district of legal domicile when exceptional circumstances warrant, *not* to remove, replace or preclude exercise of the child’s fundamental right to attend school in such district”) (emphasis in original).

³⁸ See N.J.A.C. 6A:32-2.1 (definition of “adult student” for purposes of regulation governing school district operations, including rules regarding student records); N.J.A.C. 6A:14-2.3(m) (rights under special education laws generally transfer to the student upon attainment of age 18, unless the parent has obtained guardianship); N.J.A.C. 6A:14-1.3 (“adult student” defined for special education purposes as a person who has attained age 18 who is not under legal guardianship). See generally N.J.S.A. 9:17B-1 – 4 (age of majority under New Jersey law).

³⁹ N.J.A.C. 6A:22-3.1(a)(2). Prior to the issuance of this specific regulation governing domicile of an adult student, the Commissioner of Education reasoned that under the statute generally granting 18-year-olds the same powers as persons 21 or more years of age (N.J.S.A. 9:17B-3), an 18-year-old student had “the right to choose her own domicile.” E.L. o/b/o A.H. v. Board of Educ. of Morris Hills Regional School Dist., 2000 WL 34401277 (Comm’r of Educ. Feb. 15, 2000) (“affidavit student” rules applied only prior to student’s 18th birthday; at 18th birthday, student determined own domicile).

⁴⁰ N.J.A.C. 6A:22-3.1(a)(2).

⁴¹ Schumm v. Schumm, 122 N.J. Super. 146 (Ch. Div. 1973).

⁴² Model registration forms issued by the Commissioner of Education for use by school districts, currently available online at <https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) (2010) and in the Appendix to this publication, include the following statement: *If you are claiming to be an emancipated student, are you living independently in your own permanent home in the district? If yes, please describe the proofs you will provide, in addition to those demonstrating domicile, to demonstrate that you are not in the care and custody of a parent or guardian.*

See also Alford v. Somerset County Welfare Board, 158 N.J. Super. 302 (App. Div. 1978) (presumption against emancipation before attaining age of majority); Dolce v. Dolce, 383 N.J. Super. 11 (App. Div. 2006); Filippone v. Lee, 304 N.J. Super. 301 (App. Div. 1997). Note that New Jersey law regarding child support has recently been altered by an “emancipation statute,” which creates an automatic termination of child support obligations at age 19 unless an exception applies. N.J.S.A. 2A:17-56.67 *et seq.*

⁴³ N.J.A.C. 6A:22-3.3(a).

⁴⁴ N.J.A.C. 6A:22-3.4(d)(3).

⁴⁵ Board of Education of the Township of Middle v. K.K. and P.K., 1992 WL 519157 (Initial Decision July 20, 1992 and Comm’r of Educ. Decision September 8, 1992) (domicile established despite fact that year-round residency in campground violated campground bylaws and local ordinances).

⁴⁶ Bd. of Educ. of the Twp. of Egg Harbor v. Bd. of Educ. of the Mainland Regional High School Dist. and New Jersey Dept. of Educ., 2010 WL 4105223 (N.J. Adm. Oct. 15, 2010), *aff’d*, 2010 WL 5691969 (Comm’r of Educ. Dec. 30, 2010) (where homeless family resided in motel for several years, tuition responsibility imposed on school district in which motel was located under N.J.S.A. 18A:38-1(d) notwithstanding that local ordinances prohibited permanent residency at motels).

⁴⁷ See *Boundary Lines*, NJSBA (Nov/Dec 2017), <https://www.njsba.org/news-publications/school-leader/november-december-2017-volume-48-no-3/boundary-lines/> (“It is the municipality’s, not the school district’s, obligation to enforce local ordinances”).

⁴⁸ See N.J.A.C. 6A:17-2.2, discussed in *Education Rights of Homeless Students: A Guide for Advocates*, http://www.edlawcenter.org/assets/files/pdfs/student%20residency/Education_Rights_of_Homeless_Student.pdf.

⁴⁹ NJDOE, *Statement on the Enrollment and Continued Education of Undocumented Students*, <https://www.state.nj.us/education/bilingual/policy/undocumented.htm> (citing U.S. Supreme Court decision in *Plyler v. Doe*, 457 U.S. 202 (1982)). See also NJDOE, *Enrollment of Immigrant Students and/or Undocumented Students*, <https://www.state.nj.us/education/bilingual/policy/immenrol.htm>.

⁵⁰ N.J.S.A. 18A:38-1.3(c), noted in State Board of Education Administrative Code Comment/Response Form (April 5, 2017), <https://www.nj.gov/education/sboe/meetings/2017/April/public/Item%20C%20%20Student%20Residency.pdf> (Response to Comment #2, dismissing suggestion that children who immigrate illegally should not be allowed to attend New Jersey schools).

⁵¹ N.J.A.C. 6A:22-3.3(b).

⁵² N.J.A.C. 6A:22-3.4(d)(2),(d)(4).

⁵³ N.J.A.C. 6A:22-3.3(b)(1).

⁵⁴ U.S. Immigration and Customs Enforcement, *FAQ on Sensitive Locations and Courthouse Arrests*, <https://www.ice.gov/ero/enforcement/sensitive-loc> (reviewed/updated Jan. 2018).

⁵⁵ See *Letter from New Jersey Attorney General Gurbir S. Grewal to Secretary of Homeland Security Kirstjen M. Nielsen* (Jan. 25, 2018), <https://nj.gov/oag/newsreleases18/Letter-to-DHS-Jan-25-2018.pdf> (expressing concern about ICE arrest of Indonesian nationals who had just dropped off children at school). See also *Can educators call ICE on students? Betsy DeVos finally answers*, Washington Post (June 5, 2018), https://www.washingtonpost.com/news/education/wp/2018/06/05/can-educators-call-ice-on-students-betsy-devos-finally-answers/?noredirect=on&utm_term=.ad66514bb559.

⁵⁶ For purposes of the discussion of temporary residence, the term “parent” includes a student’s “guardian” as well. The definition of “guardian” as discussed below, encompasses orders of residential custody provided that the student actually lives with the custodian. N.J.A.C. 6A:22-1.2.

⁵⁷ N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:22-3.2(c).

⁵⁸ N.J.A.C. 6A:22-3.2(c)(1–2).

⁵⁹ See *Boundary Lines*, NJSBA (Nov/Dec 2017), <https://www.njsba.org/news-publications/school-leader/november-december-2017-volume-48-no-3/boundary-lines/>.

⁶⁰ State Board of Education Comments/Responses to Proposed Regulations (Dec. 16, 2009) and Memorandum from Commissioner, [https://1pdf.net/item-c-state-of-new-](https://1pdf.net/item-c-state-of-new-jersey-education-board-comments-responses-to-proposed-regulations)

[jersey_5865b3e5e12e89ae6fbb5d94](#) (the “2009 Comments/Reponses to Proposed Regulations”)(Comment #8).

⁶¹ N.J.A.C. 6A:22-3.1(c). See M.L. o/b/o G.R.C.L. v. Board of Educ. of Twp. of Belleville, 2008 WL 4712790 (N.J. Adm. Sept. 26, 2008), aff’d, <http://www.nj.gov/education/legal/commissioner/2008/nov/448-08.pdf> (Comm’r of Educ. Nov. 12, 2008) (student was entitled to continue to attend school in district of domicile; parents had not changed domicile where they moved temporarily to help grandmother recover from surgery; student’s father was also chronically hospitalized).

⁶² N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:22-3.1(a)(4).

⁶³ The one-year rule creates a “deemed domicile” but does not alter the general principle that a person can have only a single domicile despite having multiple residences. See State Board of Education, Summary of Public Comments and Agency Responses, 36 N.J.R. 4448 (October 4, 2004)(Comment #2) (statute underlying N.J.A.C. 6A:22-3.1(a)(4) “recognizes a person residing year-round in the school district for the requisite time period as domiciled there **for purposes of school attendance**, even though his or her legal domicile in other contexts may be elsewhere”) (emphasis in original).

⁶⁴ Special rules, discussed in Sections 3 through 5 of this publication, govern the placement of specific populations of students including students experiencing homelessness, students in foster care, and students whose parents are called to active military duty.

⁶⁵ N.J.S.A. 18A:39-1; N.J.A.C. 6A:27-2.2.

⁶⁶ N.J.A.C. 6A:22-3.1(a)(1)(iv) states: “No school district shall be required to provide transportation for a student who resides outside the school district for all or part of the school year unless transportation is based upon the home of the parent or guardian domiciled within the school district or otherwise required by law.” Arguably, under this regulation, parents continuing to own or rent a residence within the school district during a period of temporary residence outside the district could request transportation to and from the location of their in-district residence if the distance of this residence from school would otherwise qualify the student for transportation.

⁶⁷ Board of Educ. of the Borough of Lodi v. Board of Educ. of the Twp. of Rochelle Park, *supra*.

⁶⁸ For purposes of the rules governing divorced or separated parents, the term “parent” is intended to refer to “guardian” as well. For a definition of the term “guardian” in the context of school residency, see Students Residing with Guardian or with Person Applying for Guardianship, below.

⁶⁹ A.T. o/b/o E.T. and J.T. v. Board of Educ. of Borough of Ramsey, <https://www.nj.gov/education/legal/commissioner/2018/mar/86-18.pdf> (Comm’r of Educ. March 19, 2018) (quoting Comment #4, 2009 Comments/Reponses to Proposed Regulations).

⁷⁰ N.J.A.C. 6A:22-3.1(a) (providing rules for situations in which “there is no court order or written agreement between the parents designating the school district of attendance”); 2009 Comments/Reponses to Proposed Regulations (Comment #4) (continuing to allow “written agreement between the parents” to govern even absent court order; cases involving “falsified” agreements by a single parent without consent of the other “can be dealt with on case-by-case basis”).

⁷¹ A.T. o/b/o E.T. and J.T. v. Board of Educ. of Borough of Ramsey, *supra*.

⁷² A.T. o/b/o E.T. and J.T. v. Board of Educ. of Borough of Ramsey, *supra*.

⁷³ Board of Educ. of the Borough of Westville v. Board of Educ. of the Borough of Oaklyn, 2009 WL 2712090 (Aug. 19, 2009), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2009/sep/316-09.pdf> (Comm'r of Educ. Sept. 29, 2009) (residence of a student is the default method; a written agreement may not “retroactively” alter the school district of attendance). Westville v. Oaklyn is noted in A.T. o/b/o E.T. and J.T. v. Board of Educ. of Borough of Ramsey, *supra*, at footnote 4.

⁷⁴ N.J.A.C. 6A:22-3.1(a)(1)(i). For an interesting case involving the interplay of the rules for divorced and separated parents, the affidavit student rules, the custody rules, and the general principles of domicile, see I.J. o/b/o Q.J. v. Board of Educ. of Twp. of Hamilton, 2014 WL 1278790 (N.J. Adm. March 19, 2014), *aff'd* and modified, <https://www.nj.gov/education/legal/commissioner/2014/may/183-14.pdf> (Comm'r of Educ. May 2, 2014), *aff'd*, 2016 WL 299323 (Sup. Ct. Jan. 26, 2016) (student no longer entitled to attend school in district where his father was domiciled after father became incarcerated; evidence indicated that student lived with mother after father’s incarceration, and mother held liable for tuition charges). But see N.J.A.C. 6A:23A-19.3(a)(4) (where child’s *sole* parent or legal guardian resides in a State facility, the State assumes financial responsibility for child’s educational costs until the parent or guardian no longer resides in the State facility); N.J.S.A. 18A:7F-45 (definition of “State facility” includes correctional institutions).

⁷⁵ N.J.A.C. 6A:22-3.1(a)(1)(ii).

⁷⁶ NJDOE: School Register - 2017-2018, <http://www.nj.gov/education/finance/register/register.pdf>. N.J.S.A. 18A:7F-33 requires annual reporting (by October 20) of pupil counts, broke down by category, for the last school day prior to October 16; N.J.S.A. 18A:7F-45 defines “resident enrollment” by reference to such date. See also Board of Educ. of Borough of Highland Park v. New Jersey State Dept. of Educ., H.L., H.L.(2), H.L.(3), Board of Educ. of Twp. of West Orange, and Board of Educ. of Twp. of Sparta, 2015 WL 8012808 (N.J. Adm. Nov. 30, 2015), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2016/jan/14-16.pdf> (Comm'r of Educ. Jan. 15, 2016) (meaning behind regulatory reference to “last school day prior to October 16”).

⁷⁷ G.P. and I.R.-P. o/b/o A.P. v. Board of Educ. of Twp. of Hamilton, 2016 WL 6594591 (N.J. Adm. October 28, 2016), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2016/dec/422-16.pdf> (Comm'r of Educ. Dec. 15, 2016). See also K.B. o/b/o minor children v. Twp. of Branchburg Board of Educ., 2016 WL 2845335 (N.J. Adm. March 10, 2016), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2016/apr/151-16.pdf> (Comm'r of Educ. April 21, 2016) (written agreements regarding which parent’s residence governs school enrollment may be superseded by subsequent court order); but see Board of Educ. of the Borough of Westville v. Board of Educ. of the Borough of Oaklyn, 2009 WL 2712090 (N.J. Adm. Aug. 19, 2009), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2009/sep/316-09.pdf> (Comm'r of Educ. Sept. 29, 2009)(where parents, already divorced for several years, shared custody of student in out-of-district placement, agreement entered into by parents in February of school year could not alter school district fiscally responsible for student for school year; district where student resided on last school day prior to October 16 held responsible for entire school year; case involved conflict between school districts as opposed to tuition charge to parents).

⁷⁸ N.J.A.C. 6A:22-3.1(a)(1)(ii)(1).

⁷⁹ N.J.A.C. 6A:22-3.1(a)(1)(ii)(1).

⁸⁰ Board of Educ. of the Borough of Lodi v. Board of Educ. of the Twp. of Rochelle Park, *supra*. See also G.P. and I.R.-P. o/b/o A.P. v. Board of Educ. of Twp. of Hamilton, *supra* (the “home a child returns to on any given day” is the place in which he or she “resides” on that day).

⁸¹ N.J.A.C. 6A:22-3.1(a)(1)(ii)(2). This provision takes account of certain case law. See *2009 Comments/Reponses to Proposed Regulations* (Comment #6); Cumberland Regional H.S. Dist. Board of Educ. v. Freehold Regional H.S. Dist. Board of Educ., 293 Fed. Appx. 900 (3d Cir. 2008) (initial OAL decision is at 2005 WL 1862145) (student in residential placements in New Jersey and then Virginia).

⁸² Board of Educ. of the Borough of Lodi v. Board of Educ. of the Twp. of Rochelle Park, *supra*, citing Cumberland Regional High School Dist. Board of Educ. v. Freehold Regional High School Dist. Board of Educ., *supra* (domicile of student who resided out of state and thus in neither parent’s home could not be determined under the general regulations). But see Roxbury Twp. Board of Educ. v. West Milford Board of Educ., 283 N.J. Super. 505 (App. Div. 1995) (treating student attending residential placement as residing with mother where he had a room with furniture in mother’s house and mother and her new husband intended student to live there “should he no longer require a residential placement.”)

⁸³ Board of Educ. of Freehold Regional High School Dist. v. Board of Educ. of Borough of Bergenfield, <http://www.nj.gov/education/legal/commissioner/2012/feb/44-12.pdf> (Comm’r of Educ. Feb. 6, 2012) (tuition for twins in residential facility payable in full by mother’s school district).

⁸⁴ N.J.S.A. 18A:7B-12(b).

⁸⁵ N.J.A.C. 6A:22-3.2(c)(2).

⁸⁶ N.J.A.C. 6A:22-3.1(a)(1)(iv). It appears that the school district has no obligation to transport the student to or from the home of a parent living outside the district.

⁸⁷ N.J.A.C. 6A:22-1.2. The definition also refers to the Department of Children and Families in its role with respect to out-of-home placements, citing N.J.S.A. 18A:38-1(e). School enrollment rules for students in out-of-home care are discussed in Section 4 of this publication.

In a 2011 decision, the Commissioner of Education found that the grandmother of a child was his “de facto” parent or guardian since birth, where the child came to live with his grandmother a few days after his birth while the mother remained in college in Maryland. In this case, a court order granting the grandmother primary residential custody of the child was not obtained until *after* the grandmother’s school district found him ineligible to attend school there. The Commissioner of Education refused to impose tuition charges on the family for the period of time before the court order was granted, reasoning that a family court judge would have granted the grandmother residential custody before his enrollment in school had the family realized that such an order was necessary. The decision contains the following favorable language for parents, caregivers and advocates: “New Jersey law was never meant to penalize innocent parties, **elevate form over substance** or overlook the substantial state

interest in ensuring the education of all its children.” C.R. o/b/o T.K.G. v. Board of Educ. of Twp. of Hopewell, 2011 WL 1843933 (Comm’r of Educ. March 24, 2011) (emphasis in original).

⁸⁸ 2009 Comments/Reponses to Proposed Regulations (Comment #2); see also V.S.L. o/b/o Z.M.M. v. Board of Educ. of the City of Garfield, 2007 WL 2505595 (Comm’r of Educ., July 9, 2007) (for purposes of educational entitlement, no distinction between “guardianship” and “custody” ordered by a court).

⁸⁹ 2009 Comments/Reponses to Proposed Regulations (Comment #2). Tuition may be charged for a period during which the student did not reside with the guardian. D.A. o/b/o L.A. v. Board of Educ. of Twp. of West Orange, 2014 WL 3752088 (N.J. Adm. July 21, 2014) (tuition payable for period that student lived with sister rather than with uncle, who served as guardian).

⁹⁰ N.J.A.C. 6A:22-3.1(a)(1) currently states that “[a] student is domiciled in the school district when he or she is *the child of* a parent or guardian whose domicile is located within the school district.” While the regulatory definition of “guardian” at N.J.A.C. 6A:22-1.2 incorporates a requirement that the student “actually live with” a residential custodian to attend school in his or her district, this proviso does not apply to biological parents. See also M.L.P. o/b/o C.L.P v. Board of Educ. of Twp. of Bloomfield, 2008 WL 6839287 (Comm’r of Educ. Dec. 29, 2008) (refusing to limit right of student to attend school in district of domicile of her mother even where she lived outside the district with grandmother notwithstanding language of previous version of regulations); A.M.S. o/b/o A.D.S. v. Board of Educ. of the City of Margate, *supra* (child of full-time military parent residing with grandparents in Pennsylvania remains entitled to attend New Jersey school district for as long as his father remains domiciled there, even though father may be physically absent from district for many years).

⁹¹ N.J.S.A. 3B:12A-2 (definitions).

⁹² N.J.S.A. 3B:12A-1 (legislative findings).

⁹³ N.J.S.A. 3B:12A-4; N.J.S.A. 3B:12A-6.

⁹⁴ B.C. o/b/o M.W. v. Board of Educ. of City of Atlantic City, 2009 WL 6435425 (Comm’r of Educ. Nov. 18, 2009) (where grandmother was awarded sole custody of minor child and was domiciled in the school district, and where there was no preponderance of evidence that the child was not living with grandmother, family’s reasons for the arrangement had no bearing on determination of child’s right to attend district schools); E.H. o/b/o S.H. and SH.H. v. Board of Educ. of Twp. of Ewing, <https://www.nj.gov/education/legal/commissioner/2017/aug/229-17.pdf> (Initial Decision July 10, 2017 and Comm’r of Educ. Decision Aug. 16, 2017) (under court order, aunt living in school district had residential custody of children while divorced parents had joint legal custody; children were allowed to attend school in aunt’s district in light of credible testimony by aunt and father explaining children’s schedule).

⁹⁵ N.J.A.C. 6A:22-4.1(b)(1)(ii) (“District boards of education or their agents shall not demand or suggest that an applicant seeking to enroll a student of whom the applicant has guardianship or custody produce affidavit student proofs”); M.H.-C. o/b/o A.R. v. Board of Educ. of Twp. of Ewing, 2008 WL 1795268 (Comm’r of Educ. March 12, 2008).

⁹⁶ N.J.A.C. 6A:22-3.1(a)(3) (referring to N.J.S.A. 2A:34-54, defining “home state,” and N.J.S.A. 2A:34-65(a)(1)).

⁹⁷ N.J.A.C. 6A:22-3.1(a)(3).

⁹⁸ *2009 Comments/Reponses to Proposed Regulations* (Comment #7).

⁹⁹ See N.J.A.C. 6A:14-2.3(m) (rights under special education laws generally transfer to the student upon attainment of age 18, unless the parent has obtained guardianship).

¹⁰⁰ For more information, see *Supported Decision Making & the Problems of Guardianship*, ACLU, <https://www.aclu.org/issues/disability-rights/integration-and-autonomy-people-disabilities/supported-decision-making>; National Resource Center for Supported Decision-Making, <http://www.supporteddecisionmaking.org/>.

¹⁰¹ See *Board of Educ. of Borough of Highland Park v. New Jersey State Dept. of Educ., H.L., H.L.(2), H.L.(3), Board of Educ. of Twp. of West Orange, and Board of Educ. of Twp. of Sparta*, 2015 WL 8012808 (N.J. Adm. Nov. 30, 2015), aff'd, <http://www.nj.gov/education/legal/commissioner/2016/jan/14-16.pdf> (Comm'r of Educ. Jan. 15, 2016)(district where parents resided held responsible for educational costs for severely disabled child placed by state agency; fact that child was over age 18 did not shift responsibility).

¹⁰² See *B.F.-H. o/b/o A.C. v. Board of Educ. of Woodbridge Twp.*, *supra* (noting that special rules for homeless students would have allowed for continued enrollment in school district even if grandmother had not been found to be domiciled there).

¹⁰³ The affidavit student rules are contained at N.J.S.A. 18A:38-1(b) and N.J.A.C. 6A:22-3.2(a).

¹⁰⁴ A.M.S. o/b/o A.D.S. v. Board of Educ. of the City of Margate, *supra* (quoting Commissioner's decision stating that "the ability of a child to attend school in a district other than that of his or her legal domicile is granted by the Legislature in the best interest of the *student* – not as a means by which a local board of education can refuse to educate a domiciled child").

¹⁰⁵ N.J.A.C. 6A:22-3.1(a)(1)(iii); N.J.A.C. 6A:22-3.1(c).

¹⁰⁶ See *A.M.S. o/b/o A.D.S. v. Board of Educ. of the City of Margate*, *supra* (child of full-time military parent residing with grandparents in Pennsylvania remains entitled to attend New Jersey school district for as long as his father remains domiciled there, even though father may be physically absent from district for many years). The A.M.S. case is discussed in Section 5 of this publication.

Should a parent or guardian choose to keep the student enrolled in their district of domicile while the student resides outside the district with another caregiver, their district will not be required to provide transportation based upon the location of the nonresident caregiver's home. See N.J.A.C. 6A:22-3.1(a)(1)(iv) ("No school district shall be required to provide transportation for a student who resides outside the school district for all or part of the school year unless transportation is based upon the home of the parent or guardian domiciled within the school district or otherwise required by law").

¹⁰⁷ J.B. o/b/o R.H. v. Board of Educ. of the Twp. of Ocean, <http://www.nj.gov/education/legal/sboe/1997/jb3.pdf> (State Board of Educ. September 3, 1997) (initial OAL decision is at 1996 WL 769148).

¹⁰⁸ M.E.M. o/b/o L.A.V. v. Borough of South Plainfield Board of Educ., 2011 WL 4005284 (N.J. Adm. September 2, 2011), aff'd, <http://www.nj.gov/education/legal/commissioner/2011/oct/424-11.pdf> (Comm'r of Educ. October 7, 2011) (“the hardship that justifies a free education for an affidavit student is not limited to economic hardship”); J.B. o/b/o R.H. v. Board of Educ. of the Twp. of Ocean, *supra*.

¹⁰⁹ J.A.M. o/b/o C.A.M. v. Board of Educ. of Morris Hills Regional School Dist., 2007 WL 2247531 (N.J. Adm. July 13, 2007); aff'd, <http://www.nj.gov/education/legal/commissioner/2007/aug/324-07.pdf> (Comm'r of Educ. Aug. 15, 2007).

¹¹⁰ B.M.A. o/b/o C.H. v. Board of Educ. of the Borough of Englewood Cliffs, 2004 WL 1778453 (N.J. Adm. July 13, 2004), aff'd, <http://www.nj.gov/education/legal/commissioner/2004/aug/332-04.pdf> (Comm'r of Educ. Aug. 12, 2004).

¹¹¹ J.A. o/b/o T.C. v. Bd. of Educ. of School Dist. of South Orange and Maplewood, 1997 WL 362144 (Initial Decision Jan. 2, 1997 and Comm'r of Educ. Decision Feb. 19, 1997), aff'd as modified, 318 N.J. Super. 512 (App. Div. 1999).

¹¹² Y.I.S. o/b/o E.S. v. Northern Valley Regional High School Dist., 2001 WL 1740404 (N.J. Adm. December 6, 2001), aff'd, 2002 WL 32590893 (Comm'r of Educ. January 28, 2002), aff'd, 2002 WL 32590894 (State Board of Educ. May 1, 2002). Other cases involving parents living abroad include R.C.P. o/b/o A.S.K. v. Board of Educ. of Ramapo Indian Hills Regional School Dist., 2000 WL 869427 (N.J. Adm. May 18, 2000), aff'd, 2000 WL 34401223 (Comm'r of Educ. August 18, 2000), aff'd, 2001 WL 34609213 (State Board of Educ. January 3, 2001) (U.S.-born son of Korean parents permitted to attend school in N.J. school district of his uncle where parents were unable to move to U.S. or to provide their son with the privileges of American citizenship while in Korea) and G.L. o/b/o Y-C.L. and Y-Y.L. v. Board of Educ. of Twp. of Holmdel, 97 N.J.A.R. 2d (EDU) 643, 647, aff'd, <http://www.nj.gov/education/legal/commissioner/359-97.pdf> (Comm'r of Educ. July 10, 1997) (children residing with uncle in local school district while their parents, living in Taiwan, attempted to emigrate to United States, met affidavit student criteria as “time- consuming and difficult” process of emigrating constituted family or economic hardship).

¹¹³ M.E.M. o/b/o L.A.V. v. Borough of South Plainfield Board of Educ., 2011 WL 4005284 (N.J. Adm. September 2, 2011), aff'd, <http://www.nj.gov/education/legal/commissioner/2011/oct/424-11.pdf> (Comm'r of Educ. October 7, 2011).

¹¹⁴ Gunderson v. Board of Educ. of City of Brigantine, 1994 WL 760538 (Initial Decision July 27, 1994 and Comm'r of Educ. Decision September 15, 1994).

¹¹⁵ N.J.A.C. 6A:22-3.2(a)(2) and (3).

¹¹⁶ H.K. and G.K. o/b/o J.K. and C.K. v. Board of Educ. of the Twp. of Cherry Hill, 1998 WL 658389 (N.J. Adm. June 19, 1998), aff'd, <http://www.nj.gov/education/legal/commissioner/381-98.pdf> (Comm'r of Educ. Aug. 28, 1998). The Administrative Law Judge noted that the aunt and uncle’s home was only 15 minutes from the high school in their parents’ school district but that “[i]t did not occur” to the parents to explore the option of having their sons live with the aunt and uncle while attending school in their parents’ school district.

¹¹⁷ B.M.A. o/b/o C.H. v. Board of Educ. of the Borough of Englewood Cliffs, 2004 WL 1778453 (N.J. Adm. July 13, 2004), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2004/aug/332-04.pdf> (Comm'r of Educ. Aug. 12, 2004) (distinguishing H.K. and G.K., *supra*).

¹¹⁸ J.B. o/b/o R.H. v. Board of Educ. of the Twp. of Ocean, *supra*.

¹¹⁹ J.A.M. o/b/o C.A.M. v. Board of Educ. of Morris Hills Regional School Dist., 2007 WL 2247531 (N.J. Adm. July 13, 2007), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2007/aug/324-07.pdf> (Comm'r of Educ. Aug. 15, 2007).

¹²⁰ M.P. and D.P. o/b/o N.P. v. Board of Educ. of the Morris Hills Regional School Dist., 2007 WL 666555 (N.J. Adm. Feb. 20, 2007), *aff'd*, <https://www.nj.gov/education/legal/commissioner/2007/apr/115-07.pdf> (Comm'r of Educ. April 2, 2007). Compare Y.I.S. o/b/o E.S. v. Northern Valley Regional High School Dist., *supra* (student's move to grandparents' home was "for legitimate reasons"; student continued to live there even when not attending school).

¹²¹ While the parents wrote a statement conferring "guardianship" on the aunt and uncle and had it notarized, they did not pursue guardianship proceedings before a judge in India or in the United States.

¹²² *2009 Comments/Reponses to Proposed Regulations* (Comment #2). As noted above, students may use an F-1 visa to study in the United States on a tuition basis.

¹²³ Families considering "kinship legal guardianship" should be aware that a caregiver can only become a kinship legal guardian of a child who has already resided with the caregiver for either the last 12 consecutive months or 15 of the last 22 months. N.J.S.A. 3B:12A-2 (definition of "caregiver"). Thus, a caregiver seeking kinship legal guardianship would presumably need to satisfy the affidavit student requirements to have the child enrolled in their school district prior to the grant of guardianship. Cf. J.A. o/b/o T.C. v. Board of Educ. of School Dist. of South Orange and Maplewood School Dist., *supra* (affidavit student status permitted for niece; aunt had not sought guardianship as niece was near adulthood by the time she came to live with her).

¹²⁴ N.J.S.A. 18A:38-1(b); N.J.A.C. 6A:22-3.2(a).

¹²⁵ See M.E.M. o/b/o L.A.V. v. Borough of South Plainfield Board of Educ., *supra*; J.B. o/b/o R.H. v. Board of Educ. of the Twp. of Ocean, *supra*; E.L. and J.L. o/b/o A.H. v. Board of Educ. of Morris Hills Regional School Dist., 2000 WL 148207 (N.J. Adm. Jan. 3, 2000), *aff'd and modified*, 2000 WL 34401277 (Comm'r of Educ. Feb. 15, 2000) ("the plain statutory language, phrased in the disjunctive, [states] that parental incapacity may be due to either 'family or economic hardship'"). *But cf.* H.T. o/b/o T.A. v. Board of Educ. of City of Orange, 2011 WL 6593386 (N.J. Adm. Nov. 30, 2011), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2012/jan/15-12.pdf> (Comm'r of Educ. Jan. 17, 2012) (affidavit student status denied where mother's financial difficulty stemmed from maintaining two residences; "mother could extricate herself from this position by giving up the apartment in East Orange or the home in Georgia").

¹²⁶ J.D. o/b/o A.D. v. Board of Educ. of Lenape Regional H.S., 2009 WL 728429 (N.J. Adm. Feb. 19, 2009), *aff'd*, <http://www.nj.gov/education/legal/commissioner/2009/apr/108-09.pdf> (Comm'r of Educ. April 2, 2009) (student cannot attend school in sister's school district where parents intended to continue to contribute for her "food, clothing, medical, lodging and other needs"; student's need to get a "fresh

start” after some disciplinary problems and to escape stress of living with a brother with drug addiction were insufficient to allow free attendance in sister’s school district given parents’ continued financial support); E.P.F. o/b/o M.W. v. Twp. of Mount Olive Board of Educ., 2010 WL 1493879 (N.J. Adm. April 5, 2010), aff’d and remanded, 2010 WL 5648915 (Comm’r of Educ. May 12, 2010) (affidavit student status denied where student’s aunt, with whom she resided, and student’s mother, both indicated that student would not be financially supported by aunt) (see decisions on remand at 2010 WL 3037016 and 2010 WL 5624385 regarding tuition owed).

¹²⁷ N.J.A.C. 6A:22-3.2(a)(4).

¹²⁸ *ATTENDANCE AT SCHOOL BASED ON DOMICILE OR RESIDENCY IN THE SCHOOL DISTRICT: SAMPLE FORMS, NOTICES AND INFORMATIONAL DOCUMENTS*, currently available online at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) (2010) and in the Appendix to this publication.

¹²⁹ P.B. o/b/o C.K. v. Board of Educ. of Twp. of Lawrenceville, 2009 WL 728431 (N.J. Adm. Feb. 25, 2009), aff’d, <http://www.nj.gov/education/legal/commissioner/2009/apr/107-09.pdf> (Comm’r of Educ. April 2, 2009)(affidavit student status improper where caregiver grandmother could not afford to provide for student, student lived with mother during weekends and vacations and when grandmother left state, mother paid for clothing and school supplies, and mother contributed to household expenses when grandmother filed for bankruptcy).

¹³⁰ S.B. o/b/o R.B. v. Board of Educ. of Twp. of Ewing, 2007 WL 431224 (N.J. Adm. Jan. 11, 2007), aff’d, 2007 WL 841582 (Comm’r of Educ. Feb. 5, 2007) (mother’s payment of all of the student’s expenses other than amounts the student earned from working went “far beyond” what is allowed for affidavit students).

¹³¹ Gunderson v. Board of Educ. of City of Brigantine, 1994 WL 760538 (Initial Decision July 27, 1994 and Comm’r of Educ. Decision September 15, 1994) (affidavit student status allowed where caregiver received Social Security survivor benefits on behalf of child; these benefits were a direct government benefit to child rather than compensation to the caregiver). The sample affidavit student application cited above states that “[r]eceipt by the resident of social security or other similar benefits on behalf of the student do not render a student ineligible.”

¹³² B.M.A. o/b/o C.H. v. Board of Educ. of the Borough of Englewood Cliffs, 2004 WL 1778453 (N.J. Adm. July 13, 2004), aff’d, <http://www.nj.gov/education/legal/commissioner/2004/aug/332-04.pdf> (Comm’r of Educ. Aug. 12, 2004) (“mere fact that the mother’s health insurance happens to extend to petitioner is not enough to defeat the overwhelming evidence that the grandmother has assumed full financial responsibility for supporting her granddaughter”); J.B. o/b/o R.H. v. Board of Educ. of the Twp. of Ocean, *supra*.

¹³³ R.A.J. o/b/o C.A.P. v. Board of Educ. of Twp. of Ewing, 2007 WL 1899744 (N.J. Adm. June 13, 2007), aff’d, <http://www.nj.gov/education/legal/commissioner/2007/jul/302-07.pdf> (Comm’r of Educ. July 27, 2007).

¹³⁴ E.L. and J.L. o/b/o A.H. v. Board of Educ. of Morris Hills Regional School Dist., 2000 WL 148207 (N.J. Adm. Jan. 3, 2000), aff’d and modified, 2000 WL 34401277 (Comm’r of Educ. Feb. 15, 2000) (affidavit

student requirements met where grandparents with whom student resided paid about 60% of student's living expenses; \$200 monthly payment from mother represented "mainly a 'pass-through' of child support payments from the biological father").

¹³⁵ N.J.A.C. 6A:22-3.2(a)(1)(ii)(1); N.J.S.A. 18A:38-1(b)(1).

¹³⁶ H.T. o/b/o T.A. v. Board of Educ. of City of Orange, 2011 WL 6593386 (N.J. Adm. Nov. 30, 2011), aff'd, <http://www.nj.gov/education/legal/commissioner/2012/jan/15-12.pdf> (Comm'r of Educ. Jan. 17, 2012) (parent also failed to demonstrate family or economic hardship, where financial hardship resulted from owning a second home in Georgia).

¹³⁷ N.J.A.C. 6A:22-4.1(b)(1)(i).

¹³⁸ N.J.A.C. 6A:22-4.1(b)(1)(ii). See o/b/o J.A.J. v. Washington Twp. Board of Educ., 2015 WL 8296236 (N.J. Adm. June 24, 2015), aff'd, <https://www.nj.gov/education/legal/commissioner/2015/aug/262-15.pdf> (Comm'r of Educ. Aug. 7, 2015) (as of date resident takes legal custody of a child, affidavit student analysis becomes irrelevant; retroactive custody order may "obviate the need for an 'affidavit-student' analysis for the period before the date on which a custody order is actually obtained").

¹³⁹ N.J.A.C. 6A:22-4.1(b)(1).

¹⁴⁰ N.J.A.C. 6A:22-3.2(a)(2).

¹⁴¹ N.J.A.C. 6A:22-3.2(a)(3); Gunderson v. Board of Educ. of City of Brigantine, 1994 WL 760538 (Initial Decision July 27, 1994 and Comm'r of Educ. Decision September 15, 1994).

¹⁴² N.J.S.A. 18A:38-1(c); N.J.A.C. 6A:22-3.2(a)(5).

¹⁴³ N.J.A.C. 6A:22-5.1(a)(1); N.J.A.C. 6A:3-8.1(b); see Y.I.S. o/b/o E.S. v. Northern Valley Regional High School Dist., 2001 WL 1740404 (N.J. Adm. December 6, 2001), aff'd, 2002 WL 32590893 (Comm'r of Educ. January 28, 2002), aff'd, 2002 WL 32590894 (State Board of Educ. May 1, 2002) (allowing petition by father to stand where it predated promulgation of relevant regulation).

¹⁴⁴ N.J.S.A. 18A:38-1.1. While the statute refers to remaining enrolled in the original school "district" for the remainder of the school year, regulations are intended to clarify that the student may remain in his or her original school, consistent with the law's purpose of maintaining continuity for students experiencing a family crisis. State Board of Education Administrative Code Comment/Response Form and Memorandum (Meeting Date 4/1/2015), <http://www.state.nj.us/education/sboe/meetings/2015/April/public/Item%20C%20%20Student%20Residency.doc> (Comment #5). See N.J.A.C. 6A:22-3.2(h)(2), (h)(4)(ii) (referring to maintaining "current school of attendance" pending school district review and executive county superintendent determination).

¹⁴⁵ N.J.A.C. 6A:22-3.2(h)(1).

¹⁴⁶ A student attending a summer academic program may be allowed to remain in the school district for the remainder of the summer program if it is considered an extension of the preceding school year. N.J.A.C. 6A:22-3.2(h).

¹⁴⁷ N.J.A.C. 6A:22-3.2(h)(2)(i).

¹⁴⁸ N.J.A.C. 6A:22-3.2(h)(2). Even if a parent does not specifically request continued enrollment under the family crisis rules, a school district must provide notice and an opportunity for a hearing before ceasing to provide educational services to a student. There appears to be some affirmative obligation on the part of a school district to follow the procedural rules for family crisis if a parent notifies the school district of circumstances that might trigger such rules. See C.C. and P.C. o/b/o P.C. v. Somerville Borough Board of Educ. et al., 2015 WL 8012805 (N.J. Adm. Nov. 20, 2015).

¹⁴⁹ N.J.A.C. 6A:22-3.2(h)(4). It appears that the “period of ineligible attendance,” for which transportation costs may be assessed to the parent, would include the 21-day appeal period after a school district’s initial determination that the family crisis criteria have not been met. This would be consistent with the general rule for tuition assessments, discussed in Section 7 of this publication.

¹⁵⁰ N.J.A.C. 6A:22-3.2(h)(4)(ii). The appeal process for family crisis determinations differs from the general appeal process for residency disputes discussed in Section 7 of this publication. Initial appeal to the executive county superintendent is intended to expedite family crisis determinations and resolve the majority of disputes. State Board of Education Administrative Code Comment/Response Form and Memorandum (Meeting Date 4/1/2015), <http://www.state.nj.us/education/sboe/meetings/2015/April/public/Item%20C%20%20Student%20Residency.doc> (Comment #7). It appears, moreover, that when a parent or guardian invokes the family crisis rules and appeals to the executive county superintendent, the parent or guardian risks being assessed only transportation costs, not tuition costs, should it be determined that the situation was not a family crisis. N.J.A.C. 6A:22-3.2(h)(4)(iii). Parents who continue to send their child to school in a district after moving away from the district – without notifying the district of the move and its circumstances – will not receive transportation to and from their new residence and are exposed to the risk of tuition charges under the general rules discussed in Section 7 of this publication.

¹⁵¹ State Board of Education Administrative Code Comment/Response Form and Memorandum (Meeting Date 4/1/2015), <http://www.state.nj.us/education/sboe/meetings/2015/April/public/Item%20C%20%20Student%20Residency.doc> (Comment #7) (parents may file motion for emergent relief requesting continued enrollment during appeal to Commissioner); NJDOE, *Family Crisis Transportation Procedures*, <http://www.state.nj.us/education/finance/transportation/procedures/FamilyCrisisTransportationProcedures.pdf> (“The district is not required to enroll or transport the student during this appeal [to the Commissioner]”).

¹⁵² N.J.A.C. 6A:22-3.2(h)(9); State Board of Education Administrative Code Comment/Response Form and Memorandum (Meeting Date 4/1/2015), <http://www.state.nj.us/education/sboe/meetings/2015/April/public/Item%20C%20%20Student%20Residency.doc> (Commissioner’s assignment of transportation costs is discretionary on case-by-case basis).

¹⁵³ N.J.A.C. 6A:22-3.2(h)(3) (homeless liaison takes over where there is indication of homelessness and family crisis rules do not apply).

The circumstances amounting to family crisis may also overlap with circumstances allowing for application of the affidavit student rules, for example, in cases involving the death of a parent. Use of

the affidavit student rules would be appropriate where it becomes necessary for the student to live with a caregiver other than the parent or guardian and attend school in the caregiver's district.

¹⁵⁴ For a case illustrating the interplay of the residency rules for affidavit students, students experiencing homelessness, and students reaching the age of majority, see R.P. o/b/o B.B. v. Board of Educ. of Twp. of West Orange, 2010 WL 816858 (N.J. Adm. Feb. 26, 2010), aff'd, <http://www.nj.gov/education/legal/commissioner/2010/apr/115-10.pdf> (Comm'r of Educ. April 12, 2010) (once mother made school district aware that she lacked a place to live, district was obligated to proceed under "homeless" rules rather than general residency rules).

¹⁵⁵ The education provisions of the McKinney-Vento Homeless Assistance Act are found at 42 U.S.C. §11431 *et seq.*

¹⁵⁶ N.J.S.A. 18A:7B-12 - 12.1.

¹⁵⁷ N.J.A.C. 6A:17-1.2; N.J.A.C. 6A:17-2.2.

¹⁵⁸ <http://nj.gov/education/students/homeless/count.htm> (data from 2016-17 school year indicates 71% of homeless students were "doubled up" with another family).

¹⁵⁹ See Education for Homeless Children and Youths Program Non-Regulatory Guidance (updated August 2018), available at <https://www2.ed.gov/programs/homeless/legislation.html> (under Policy Guidance).

¹⁶⁰ N.J.S.A. 18A:7B-12.1; N.J.A.C. 6A:17-2.5; Education for Homeless Children and Youths Program Non-Regulatory Guidance, available at <https://www2.ed.gov/programs/homeless/legislation.html> (under Policy Guidance, Non-regulatory Guidance)(I-1 - I-4).

¹⁶¹ N.J.S.A. 18A:7B-12.3 (allowing two year tuition-free attendance in school district attended before homelessness).

¹⁶² Federal law places an obligation on states and school districts to "identify" homeless children and youth so as to ensure their enrollment in school; New Jersey regulations require school districts to identify information suggesting that an applicant may be homeless as part of the school registration process. N.J.A.C. 6A:22-4.1(f). Nonetheless, parents are advised to be proactive in contacting the homeless liaison so as to avoid claims of ineligible attendance.

¹⁶³ N.J.A.C. 6A:17-2.4(a)(1-9); 42 U.S.C. § 11432(g)(6)(A)(i-x).

¹⁶⁴ N.J.A.C. 6A:17-2.5(g); 42 U.S.C. §11432(g)(3)(C).

¹⁶⁵ As in the case of the family crisis rules, this procedural rule, involving initial appeal to the executive county superintendent, differs from the general procedures discussed in Section 7 of this publication.

¹⁶⁶ See N.J.A.C. 6A:17-2.7.

¹⁶⁷ See L.R. v. Steelton-Highspire School District, 54 IDELR 155 (M.D. Pa. 2010) (rejecting school district's argument that its obligation to immediately enroll student did not exist because student was "no longer

homeless”; under federal law, student must be immediately enrolled in event of a dispute). But see State Operated School Dist. of the City of Camden v. C. Ann Volk, Executive County Superintendent, <https://www.nj.gov/education/legal/commissioner/2017/jun/172-17R.pdf> (Comm’r of Educ. June 20, 2017) (where executive county superintendent properly found student homeless in 2014, but homeless status ended in 2016, school district may seek reimbursement from parent of any excess cost incurred for 2016-2017 school year).

¹⁶⁸ While homelessness may be asserted “after the fact” by a parent as a defense to a school district’s determination of ineligibility, a parent in such posture faces the burden of proving homelessness in court and is not shielded from liability for tuition. S.J. o/b/o V.J. v. Bd. of Educ. of South Orange-Maplewood School Dist., 2008 WL 384126 (N.J. Adm. Jan. 22, 2008), aff’d, 2008 WL 2941746 (Comm’r of Educ. March 3, 2008); J.G. and D.G. o/b/o J.T.G. v. Bd. of Educ. of the Borough of Point Pleasant, 2010 WL 3867065 (N.J. Adm. Sept. 23, 2010), aff’d, 2010 WL 5691963 (Comm’r of Educ. Dec. 27, 2010); but cf. B.F.-H. o/b/o A.C. v. Board of Educ. of Woodbridge Twp. supra (noting that special rules for homeless students would have allowed for continued enrollment in school district even if grandmother had not been found to be domiciled there).

¹⁶⁹ See M.O’K. and S.O’K o/b/o K.O’K, A.O’K. and C.O’K. v. Bd. of Educ. of the Borough of Creskill and Bd. of Educ. of the Borough of Little Ferry, <https://www.nj.gov/education/legal/commissioner/2014/aug/325-14.pdf> (Comm’r of Educ. Aug. 12, 2014); aff’d, 2016 WL 4699166 (Sup. Ct. App. Div. Sept. 8, 2016) (students who lived with their parents in the grandparents’ home for over a year were still “homeless” in part because 5 people occupied “the bottom floor of the house, which floor has no shower, sink or kitchen”); L.R. v. Steelton-Highspire School District, 54 IDELR 155 (M.D. Pa. 2010)(finding of homelessness appears likely for purposes of preliminary injunction; child and grandmother who was raising him “share[d] a bedroom, and...must live by the rules of the house, including a rule that they are not allowed to go to the lower level of the house after bedtime”).

¹⁷⁰ http://www.edlawcenter.org/assets/files/pdfs/student%20residency/Education_Rights_of_Homeless_Stu.pdf.

¹⁷¹ “Resource family home” is defined in N.J.S.A. 30:4C-26.1 to mean and include “private residences wherein any child in the care, custody, or guardianship of the Department of Children and Families may be placed by the department, or with its approval, for care, and shall include any private residence maintained by persons with whom any child is placed by the Division of Child Protection and Permanency for the purpose of adoption until the adoption is finalized.” See also N.J.A.C. 3A:11-1.3 (defining “resource family home” as “a private residence, located in New Jersey, other than a children’s group home, treatment home, teaching family home, alternative care home, or shelter home, in which board, lodging, care and temporary out-of-home placement services are provided by a resource family parent on a 24-hour basis to a child under the auspices of the Division of Child Protection and Permanency, including a home licensed by the Division of Child Protection and Permanency for the placement of a child for the purpose of adoption. A resource family home does not include a child living with his or her own birth parent or parent who has adopted that child. A resource family home may provide one or more of the following services: (i) Regular foster care; (ii) Kinship care; and (iii) Adoptive care”).

¹⁷² See *Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care*, <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf> (June 23, 2016) (the “Federal Guidance”) pages 4-6.

¹⁷³ See Federal Guidance, page 3 (citing study showing that 75 percent of children in foster care made an unscheduled school change in one school year, compared to less than 40 percent for children not in foster care); *Educational stability policy and the interplay between child welfare placements and school moves*, Children and Youth Services Review (2017), <http://www.unco.edu/cebs/foster-care-research/pdf/Educational-Stability-Policy.pdf> (school mobility rate for Colorado students in foster care was more than three times the state average; California foster care students transferred schools two to three times more than other students); *USDOE Dear Colleague Letter re: highly mobile children with disabilities* (July 19, 2013) <https://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/12-0392dclhighlymobile.pdf>.

Prior to passage of the Every Student Succeeds Act, children and youth “awaiting foster care placement” were treated as “homeless” under federal law and covered by the educational provisions governing homeless students. The removal of this category from the definition of “homeless” became effective in December 2016 for most states; the change in law was necessary because the provisions related to homelessness do not adequately address the role of the child welfare agency, a critical player for children in foster care. See *Education for Homeless Children and Youths Program Non-Regulatory Guidance, supra*; *The Education of Children and Youth in Foster Care in the Reauthorization of the Elementary and Secondary Education Act*, National Association for the Education of Homeless Children and Youth (Feb. 2015). Under current law, students awaiting foster care placement or in the foster care system are not automatically treated as “homeless” but may be classified as such if other circumstances indicating homelessness exist (e.g., living in a shelter or “doubled-up” with another family, as discussed above).

¹⁷⁴ The Federal Guidance is available online at <https://www2.ed.gov/policy/elsec/leg/essa/edhhsfostercarenonregulatorguide.pdf> (June 23, 2016).

¹⁷⁵ See *Educational stability policy and the interplay between child welfare placements and school moves*, Children and Youth Services Review (2017), <https://www.unco.edu/cebs/foster-care-research/pdf/Educational-Stability-Policy.pdf>.

¹⁷⁶ 20 U.S.C. §6312(c)(5)(B).

¹⁷⁷ See *School Stability for Children in Foster Care* (Updated March 2013), Legal Aid Society, <http://affcnyc.org/wp-content/uploads/LawRegulationSS.pdf> (citing 42 U.S.C. §675(1)(G)).

¹⁷⁸ N.J.S.A. 30:4C-26; 30:4C-26b(a,c).

¹⁷⁹ N.J.S.A. 30:4C-26b(b-c). A useful Education Stability Timeline -- illustrating the steps that occur in determining school placement of a student in foster care -- may be found on the website of the New Jersey Child Placement Advisory Council (NJ CPAC) at http://www.njcpac.org/wp-content/uploads/2017/09/DCP_At_a_Glance.pdf.

Various provisions of New Jersey law permit a student in foster care to attend school in the district in which the resource family home is located. (Attendance in such school district was apparently the general rule prior to the enactment of federal and state educational stability laws.) The provisions allowing for attendance in the district of the resource family home are N.J.S.A. 18A:38-1(e) (students placed in a school district by DYFS – predecessor to CP&P— may attend school in the district), N.J.A.C. 6A:22-3.1(a)(5) (a student is considered domiciled in a school district if DCF, acting as the student’s guardian, has placed the student in the district), N.J.S.A. 18A:38-2 and N.J.A.C. 6A:22-3.2(e) (free attendance for nonresidents placed in district under court order). See also B.C. o/b/o M.W. v. Board of Educ. of City of Atlantic City, 2009 WL 6435425 (Comm’r of Educ. Nov. 18, 2009) (“court orders” referenced in N.J.S.A. 18A:38-2 are orders of placement in resource family homes, i.e., foster homes); C.C. and P.C. o/b/o P.C. v. Somerville Borough Board of Educ. et al., 2015 WL 8012805 (N.J. Adm. Nov. 20, 2015) (law in regard to 18A:38-2 “is not settled”); *2009 Comments/Reponses to Proposed Regulations* (orders referred to in N.J.S.A. 18A:38-2 are orders of placement in resource family homes, not orders of residential custody); N.J.S.A. 30:4C-26(b) (students placed in a municipality are deemed residents of such municipality for all purposes except school funding); 30:4C-26(c) (students placed in a school district are entitled to educational benefits of the district determined pursuant to N.J.S.A. 30:4C-26b). Provisions allowing for free attendance in the district where a resource family home is located may (and should) be read consistently with the school stability rules; this district must, as noted, enroll the student immediately under certain circumstances involving safety concerns. Absent special provisions allowing a child in foster care to attend school in the district of the resource family home, enrollment could be denied under the general rule that a student’s right to enroll is based on the domicile of his or her parent or guardian.

¹⁸⁰ Under N.J.S.A. 30:4C-26b(d), a best interest determination by CP&P that the student should remain enrolled in his or her current school is “deemed conclusive” at the time the determination is made, while a determination that the student should enroll in the district of the resource family home remains “preliminary” pending additional requirements involving notice and opportunity for court review. School placements may also be reviewed by a court (or reconsidered by CP&P) at a later time under N.J.S.A. 30:4C-26b(e). While the statute contains rules generally requiring CP&P to make efforts to consult with a student’s parent or guardian in determining best interest, and to notify the parent or guardian of determinations, CP&P may not inform a parent or legal guardian about the identity or location of the school of enrollment if this disclosure would pose a safety risk for the student. N.J.S.A. 30:4C-26b(b),(c),(j).

¹⁸¹ N.J.S.A. 30:4C-26b(f).

¹⁸² Federal Guidance, Question #12. In a Frequently Asked Questions publication, the NJDOE addressed the question of whether it would be “easier to require [the child welfare agency] to place a child in a resource family home in the same district where the child currently attends school.” The response is that, while efforts are made to keep a child close to home, it is often best for a child to be placed with relatives even if they do not live within the current school district. *Frequently Asked Questions about the Educational Stability Law*, <http://www.state.nj.us/education/students/safety/faq/stability.shtm> (Question #2).

¹⁸³ N.J.S.A. 18A:7B-12(a). In the case of a child who was placed in a resource family home prior to this effective date, fiscal responsibility lies with the school district in which the resource family parents reside. A subsequent placement “in a State facility or by a State agency,” however, causes the pre-effective-date placement to be disregarded in determining fiscal responsibility. (In cases in which a

“district of residence”; i.e., district with fiscal responsibility, cannot be determined under these rules or is identified under the rules to lie outside the State of New Jersey, fiscal responsibility for the student falls upon the State. N.J.S.A. 18A:7B-12(d)).

¹⁸⁴ See *Frequently Asked Questions about the Educational Stability Law*, <http://www.state.nj.us/education/students/safety/faq/stability.shtml> (Question #8).

While the general rule is that the district where a child attends school is the district that bears the cost of educating the student, the rules applicable to students in foster care represent an exception to this rule.

¹⁸⁵ See *Frequently Asked Questions about the Educational Stability Law*, <http://www.state.nj.us/education/students/safety/faq/stability.shtml> (Question #6). N.J.S.A. 30:4C-26b(i) clarifies that New Jersey’s educational stability rules for students in foster care should not be construed to require any school district to fund students placed in private schools by their parents or guardians.

¹⁸⁶ 20 U.S.C. §6312(c)(5)(B).

¹⁸⁷ Federal Guidance, Question #26; *Frequently Asked Questions about the Educational Stability Law*, <http://www.state.nj.us/education/students/safety/faq/stability.shtml> (Question #4).

¹⁸⁸ Federal Guidance, Question #29.

¹⁸⁹ Federal Guidance, Question #25.

¹⁹⁰ Federal Guidance, Question #1. This definition of “foster care” is found at 45 C.F.R. 1355.20(a).

¹⁹¹ NJDOE Letter to Chief School Administrators re: Ensuring Educational Stability for Children in Foster Care (October 4, 2016), <http://www.state.nj.us/education/ESSA/resources/100416Foster.pdf> (defining “foster care” per federal definition at note 1); NJDOE Letter to Chief School Administrators re: Ensuring Educational Stability for Children in Foster Care (June 27, 2017), <https://homeroom5.doe.state.nj.us/broadcasts/2017/JUN/27/16645/Guidelines%20for%20Ensuring%20Educational%20Stability%20for%20Children%20in%20Foster%20Care.pdf> (reminder letter). See also Edgewater Board of Education Policy re: Foster Care and Educational Stability, <https://www.edgewaterschools.org/cms/lib/NJ01001782/Centricity/Domain/274/Policy%205118%20%20Foster%20Care%20and%20Educational%20Stability%20for%20posting.pdf> (federal definition of “foster care”).

Group home regulations contained at N.J.A.C. 3A:56-6.7, indicating that group homes should attempt to enroll residents in a “local community school, if appropriate,” should not be read inconsistently with the federal mandate to ensure educational stability (in accord with a best interest determination).

¹⁹² N.J.A.C. 3A:11-1.3 (definition of “out-of-home placement” or “placement”).

¹⁹³ Federal Guidance, Question #8.

¹⁹⁴ Federal Guidance, Question #8 and Question #16; see also *The Journey to Community Housing with Supports*, http://www.shanj.org/images/2018_uploads/Housing_Guide_2018.pdf.

¹⁹⁵ See N.J.S.A. 18A:7B-1 *et seq.* (State Facilities Education Act of 1979); N.J.A.C. 6A:17-3.1 – 3.7 (Educational Programs for Students in State Facilities); N.J.A.C. 6A:14-8.1 – 8.3 (special education programs provided in state facilities). Under N.J.A.C. 6A:14-8.3, “a residential state facility may recommend placement of a student with a disability in a local school district. Documentation of attempts to place the student in the least restrictive environment ... shall be stated in the student’s IEP.” See also DCF Office of Education website, <http://www.nj.gov/dcf/about/divisions/oe/>.

¹⁹⁶ One commentator has noted that the ESSA provisions fail to address the educational stability needs of students exiting restrictive facilities (where educational programs may be provided on-site) for less restrictive settings (where the student may attend school in the community), suggesting that these students should be entitled to enroll at a school attended before entering the facility. See *Educational stability policy and the interplay between child welfare placements and school moves*, Children and Youth Services Review (2017), <http://www.unco.edu/cebs/foster-care-research/pdf/Educational-Stability-Policy.pdf> (page 216).

¹⁹⁷ N.J.A.C. 6A:17-3.6(d).

¹⁴⁷ *Every Student Succeeds Act, New Jersey State Plan* (August 2017), <http://www.state.nj.us/education/ESSA/plan/plan.pdf> (page 147).

¹⁹⁹ “State facility” is defined in N.J.S.A. 18A:7F-45.

²⁰⁰ N.J.S.A. 18A:7B-12(b). Fiscal responsibility falls upon the State under certain limited circumstances. N.J.S.A. 18A:7B-12(d).

²⁰¹ N.J.A.C. 6A:23A-19.2; *Board of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, 2012 WL 1345089 (Sup. Ct. App. Div. 2012), *cert. denied*, 212 N.J. 198 (2012) (upholding use of single point in time for determining “present district of residence” of parent or guardian); *Board of Educ. of Borough of Highland Park v. New Jersey State Dept. of Educ.*, H.L., H.L.(2), H.L.(3), *Board of Educ. of Twp. of West Orange, and Board of Educ. of Twp. of Sparta*, 2015 WL 8012808 (N.J. Adm. Nov. 30, 2015), *aff’d*, <http://www.nj.gov/education/legal/commissioner/2016/jan/14-16.pdf> (Comm’r of Educ. Jan. 15, 2016) (where parents of residentially placed daughter moved in November of a school year, school district from which they moved remained responsible for daughter’s educational costs for that year, but fiscal responsibility shifted to their new district of residence for next school year notwithstanding that daughter never lived in that district and would not live with parents again; New Jersey law regarding students in state facilities “aims to avoid placing an undue burden on the municipality in which the state facility is located”).

²⁰² <http://www.edlawcenter.org/assets/files/pdfs/publications/Educ.RightsChildrenInFosterCareGuideForAdvocates-English2015.pdf> (Spanish language version at <http://www.edlawcenter.org/assets/files/pdfs/publications/Educ.RightsChildrenInFosterCareGuideForAdvocates-Spanish2015.pdf>).

²⁰³ See <http://www.nj.gov/education/foster/contact/liaison.shtml>.

²⁰⁴ N.J.S.A. 18A:38-3.1 (enacted 2015); N.J.S.A. 18A:38-3(b); N.J.A.C. 6A:22-3.2(f) (citing both statutory provisions). The rules allowing a student to enroll in or continue to attend school in this district during a parent’s active military service flow from the basic rule that a student may attend school in the district in which his or her parent or guardian is domiciled -- but provide additional certainty and protection from school district assertions that domicile has changed, including changes of domicile deemed to occur under the “one-year rule” of N.J.S.A. 18A:38-1(d). (For a discussion of the one-year rule, see the discussion of temporary residence in Section 2 of this publication).

²⁰⁵ N.J.S.A. 18A:38-3.1; N.J.S.A. 18A:38-3(b); N.J.A.C. 6A:22-3.2(f).

²⁰⁶ N.J.S.A. 18A:38-3.1.

²⁰⁷ N.J.S.A. 18A:38-1(b)(last paragraph); N.J.A.C. 6A:22-3.2(b).

²⁰⁸ N.J.A.C. 6A:22-3.1(a)(1)(iii) (“When a student is living with a person other than a parent or guardian, nothing in this section is intended to limit the student’s right to attend school in the parent or guardian’s school district of domicile pursuant to this chapter”); N.J.A.C. 6A:22-3.1(c) (“When a student’s parent or guardian elects to exercise such entitlement, nothing in this section shall exclude a student’s right to attend the school district of domicile although the student is qualified to attend a different school district pursuant to N.J.S.A. 18:38-1(b)...”).

²⁰⁹ A.M.S. o/b/o A.D.S. v. Board of Educ. of the City of Margate, *supra* (child of full-time military parent residing with grandparents in Pennsylvania remains entitled to attend New Jersey school district for as long as his father remains domiciled there, even though father may be physically absent from district for many years); but see N.J.S.A. 18A:38-1(d)(deemed change of domicile after one year).

²¹⁰ On its face, the “one-year rule” would appear to create a new “domicile,” for school enrollment purposes, in the case of children of full-time military parents who move to a new location and remain there “on an all-year-round basis for one year or more.” N.J.S.A. 18A:38-1(d); N.J.A.C. 6A:22-3.1(a)(4). It is unclear, however, whether the rule would be applied in this manner given the involuntary nature of military transfers and policy considerations favoring military families.

²¹¹ N.J.S.A. 18A:38-7.7; N.J.S.A. 18A:38-7.10.

²¹² N.J.S.A. 18A:38-7.8 applies to students resident within Navy Weapons Station Earle, which spans the Tinton Falls and Colts Neck school districts. See Board of Educ. of Borough of Tinton Falls v. Board of Educ. of Township of Colts Neck, 2012 WL 5187912 (Sup. Ct. App. Div. 2012) (statute by its terms applies to all students residing on the federal property, even children of civilians whose families leased vacant housing there). N.J.S.A. 18A:38-7.10 *et seq.* were enacted to apply to children residing at Fort Dix and McGuire Air Force base, referred to as a “multi-district federal enclave.”

²¹³ N.J.A.C. 6A:22-3.1(b) (including a “grandfather” provision for currently enrolled students permitted to attend a school district prior to December 17, 2001); *ATTENDANCE AT SCHOOL BASED ON DOMICILE OR RESIDENCY IN THE SCHOOL DISTRICT: SAMPLE FORMS, NOTICES AND INFORMATIONAL DOCUMENTS*, currently available online at <https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) (2010) and in the Appendix to this publication.

²¹⁴ N.J.S.A. 18A:36B-22; N.J.A.C. 6A:27-4.1(d).

²¹⁵ See N.J.S.A. 18A:36A; N.J.A.C. 6A:11-1.2 (definition of “district of residence” for charter schools).

²¹⁶ N.J.A.C. 6A:11-4.5(a, d).

²¹⁷ Board of Educ. of the Twp. of Piscataway v. New Jersey Dept. of Educ., Office of School Finance, 2017 WL 2812679 (N.J. Adm. June 14, 2017), aff’d, <https://www.nj.gov/education/legal/commissioner/2017/jul/208-17.pdf> (Comm’r of Educ. July 27, 2017) (citing N.J.A.C. 6A:23A-15.2 – 15.3).

²¹⁸ N.J.A.C. 6A:27-3.1. Aid in lieu of transportation is limited by statute to a maximum amount; for school year 2018-19, that amount is \$1000 per year, or \$5.55 per day. *NJDOE Student Transportation Frequently Asked Questions*, https://www.nj.gov/education/genfo/faq/faq_transportation.shtml; *Charter and Renaissance School Transportation Procedures*, https://www.nj.gov/education/finance/transportation/procedures/charter_proc.pdf (2014).

²¹⁹ N.J.A.C. 6A:19-2.3.

²²⁰ N.J.A.C. 6A:22-3.4(a) lists the types of documentation to be submitted; see also *ATTENDANCE AT SCHOOL BASED ON DOMICILE OR RESIDENCY IN THE SCHOOL DISTRICT: SAMPLE FORMS, NOTICES AND INFORMATIONAL DOCUMENTS*, currently available online at <https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) (2010) and in the Appendix to this publication.

²²¹ N.J.A.C. 6A:22-3.4(b).

²²² N.J.A.C. 6A:22-3.4(c).

²²³ See *Immigration Status Irrelevant to Eligibility* in Section 2 of this publication. Consistent with federal law, N.J.S.A. 18A:36-20 and 18A:38-5.1 prohibit discrimination in school admission based on race, color, creed, sex, national origin or ancestry.

²²⁴ See *Housing Status Irrelevant to Eligibility* in Section 2 of this publication.

²²⁵ N.J.A.C. 6A:22-3.4(d); N.J.S.A. 18A:38-1.3(c) (enrollment may not be conditioned on immigration status).

²²⁶ N.J.A.C. 6A:22-3.4(e).

²²⁷ T.L. o/b/o A.B. v. Board of Educ. of Twp. of Union, 2016 WL 1634781 (N.J. Adm. April 15, 2016), aff’d, <https://www.nj.gov/education/legal/commissioner/2016/jul/255-16.pdf> (Comm’r of Educ. July 13, 2016), aff’d, 2017 WL 6603938 (Sup. Ct. App. Div. Dec. 27, 2017) (evidence supporting administrative rulings included parent’s “failure to produce her tax returns to show proof of domicile”).

²²⁸ *Fact Sheet: Information on the Rights of All Children to Enroll in School*, <https://www.justice.gov/sites/default/files/crt/legacy/2014/05/08/plylerfact.pdf> (2014).

²²⁹ *See* *ACLU sues 12 New Jersey school districts over policies seen as barrier to enrollment of immigrants*, <https://www.nbcnews.com/news/us-news/aclu-sues-12-new-jersey-school-districts-over-policies-seen-n895106> (July 26, 2018); *ACLU-NJ Sues 5 School Districts That Discriminate Against Immigrant Students*, <https://www.aclu.org/news/aclu-nj-sues-5-school-districts-discriminate-against-immigrant-students> (October 18, 2016).

²³⁰ N.J.S.A. 18A:38-1.3(a)-(b).

²³¹ N.J.A.C. 6A:22-4.1(g), referring to N.J.S.A. 18A:36-25.1 (if the parent or guardian refuses to provide certified copy of birth certificate or other proof of child's identity within 30 days of enrollment, the parent will be notified that they will be referred to law enforcement if they fail to provide proof of identity within 10 days).

²³² N.J.A.C. 6A:22-4.1(i). *See* N.J.S.A. 18A:36-25.1(b) (receiving school district shall obtain the student's records from his or her previous district within 14 days of enrollment); N.J.S.A. 18A:36-19a (records and identification for newly enrolled students).

²³³ N.J.A.C. 6A:22-4.1(h).

²³⁴ N.J.A.C. 6A:22-4.1(e).

²³⁵ N.J.A.C. 6A:22-4.1(b).

²³⁶ N.J.A.C. 6A:22-4.1(b).

²³⁷ N.J.A.C. 6A:22-4.1(b)(2).

²³⁸ N.J.A.C. 6A:22-4.1(a).

²³⁹ N.J.A.C. 6A:22-4.1(f). *See* *Education Rights of Homeless Students: A Guide for Advocates*, http://www.edlawcenter.org/assets/files/pdfs/student%20residency/Education_Rights_of_Homeless_Students.pdf.

²⁴⁰ N.J.A.C. 6A:22-4.1(c).

²⁴¹ *See* N.J.A.C. 6A:22-4.2(b)(2) (in case of provisional eligibility, school district must provide "a clear description of the missing documents or information that still must be provided before a final eligibility status can be attained").

²⁴² The school district must inform the applicant about who to contact in the district to express the intention to appeal. <https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) (2010) (sample notices of ineligibility currently available online and in the Appendix to this publication).

²⁴³ N.J.A.C. 6A:22-4.1(c)(2)(i).

²⁴⁴ N.J.S.A. 18A:38-1(b); N.J.A.C. 6A:22-4.2(b)(5).

²⁴⁵ N.J.S.A. 18A:38-25.

²⁴⁶ N.J.A.C. 6A:22-4.1(d); N.J.A.C. 6A:22-4.2(b)(9).

²⁴⁷ See N.J.S.A. Const. Art. 8, §4, ¶1; J.A. o/b/o T.C. v. Bd. of Educ. of School Dist. of South Orange and Maplewood, *supra*.

²⁴⁸ N.J.A.C. 6A:22-4.2(a)(1).

²⁴⁹ N.J.A.C. 6A:22-1.2.

²⁵⁰ N.J.A.C. 6A:22-4.2(b)(1-8). As discussed above, in the case of provisional eligibility, school districts must provide a clear description of the missing documents or information that must be provided before a final eligibility determination can be made and must notify applicants that students will not be permitted to attend school beyond a certain date if missing information is not provided or an appeal is not filed. N.J.A.C. 6A:22-4.2(b)(2),(4); NOTICE OF DEFECT IN APPLICATION/POTENTIAL INELIGIBILITY, currently available online at <https://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word) (2010) and in the Appendix to this publication.

²⁵¹ N.J.A.C. 6A:22-4.3(a).

²⁵² See *Stealing education: families fake residency for school*, <https://www.app.com/story/news/education/in-our-schools/2015/09/14/stealing-education-families-fake-residency-school/71484808/>.

²⁵³ See, e.g., T.L. o/b/o A.B. v. Union, *supra* (two separate investigators arrived in the early morning hours at a residence in the school district and at a residence outside the school district to determine where the student and her mother actually lived; one followed the student and mother by car); A.P., Sr. o/b/o D.K., *supra* (early morning observations at two residences).

²⁵⁴ A.P., Sr. o/b/o D.K., *supra* (noting items in bedrooms); T.L. o/b/o A.B. v. Union, *supra* (residency investigators observed bedrooms in homes inside and outside school district; demeanor of student's mother also noted).

²⁵⁵ VerifyResidence.com, <http://www.verifyresidence.com/about-3/>, is discussed in *Stealing education, families fake residency for school*, *supra*.

²⁵⁶ See N.J.S.A. 18A:38-1(c); N.J.A.C. 6A:22-3.2(a)(5) (fraudulently allowing child to use residence and fraudulent claims of having given up custody constitute disorderly persons offenses).

²⁵⁷ T.L. o/b/o A.B. v. Union, *supra*.

²⁵⁸ N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.3(b).

²⁵⁹ N.J.A.C. 6A:22-4.3(b)-(c).

²⁶⁰ N.J.A.C. 6A:22-4.3(e).

²⁶¹ N.J.A.C. 6A:22-4.3(d).

²⁶² N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:22-4.2(b)(4)-(5).

²⁶³ N.J.A.C. 6A:22-5.1(a)(1); N.J.A.C. 6A:3-8.1(b); see Y.I.S. o/b/o E.S. v. Northern Valley Regional High School Dist., 2001 WL 1740404 (N.J. Adm. December 6, 2001), aff'd, 2002 WL 32590893 (Comm'r of Educ. January 28, 2002), aff'd, 2002 WL 32590894 (State Board of Educ. May 1, 2002) (allowing petition by father to stand where it predated promulgation of relevant regulation).

²⁶⁴ N.J.A.C. 6A:3-8.1(f).

²⁶⁵ N.J.A.C. 6A:3-1.3-1.4.

²⁶⁶ N.J.A.C. 6A:3-8.1.

²⁶⁷ N.J.A.C. 6A:3-8.1(a)(1).

²⁶⁸ N.J.A.C. 6A:3-8.1(a)(3).

²⁶⁹ N.J.A.C. 6A:3-8.1(a)(2).

²⁷⁰ N.J.A.C. 6A:3-8.1(a)(2)(i).

²⁷¹ N.J.A.C. 6A:3-8.1(a)(2)(ii).

²⁷² The proposed amendments may be found at <https://www.state.nj.us/education/code/proposed/title6a/N.J.R.NoticeofProposalRegardingN.J.A.C.6A.3.pdf>. Adoption of these amendments will likely result in technical revisions to the sample forms available online and in the Appendix to this publication.

²⁷³ N.J.A.C. 6A:3-1.5.

²⁷⁴ See *Frequently Asked Questions: Controversies and Disputes*, https://www.state.nj.us/education/genfo/faq/faq_candd.htm.

²⁷⁵ N.J.S.A. 18A:38-1(b)(2); N.J.A.C. 6A:3-8.1(c).

²⁷⁶ N.J.S.A. 18A:38-1(b)(2); I.J. o/b/o Q.J. v. Board of Educ. of Twp. of Hamilton, 2014 WL 1278790 (N.J. Adm. March 19, 2014), aff'd and modified, <https://www.nj.gov/education/legal/commissioner/2014/may/183-14.pdf> (Comm'r of Educ. May 2, 2014), aff'd, 2016 WL 299323 (Sup. Ct. App. Div. Jan. 26, 2016) (parent's argument that board of

education had failed to prove change in domicile of student rejected; parent had burden of proving that student remained domiciled in district).

²⁷⁷ See, e.g., T.L. o/b/o A.B. v. Union, supra.

²⁷⁸ N.J.A.C. 6A:22-6.1(a). The one year limitation was added by a 2013 amendment to the regulations.

²⁷⁹ The regulation states that tuition may be assessed where “the petitioner does not sustain the burden of demonstrating the student’s right to attend the school district, or the petitioner withdraws the appeal, fails to prosecute, or abandons the appeal by any means other than settlement agreeing to waive or reduce tuition.”

²⁸⁰ N.J.A.C. 6A:22-6.2(a); S.L. o/b/o J.L., J.L., and O.L. v. Board of Educ. of Twp. of Union, 2015 WL 4410098 (N.J. Adm. June 4, 2015), aff’d and modified, <https://www.nj.gov/education/legal/commissioner/2015/jul/233-15.pdf> (Comm’r of Educ. July 8, 2015) (tuition assessed for one full school year plus a portion of a second school year).

²⁸¹ N.J.A.C. 6A:22-6.3, referring to N.J.A.C. 6A:23A-17.1.

²⁸² S.M. o/b/o A.T. v. Board of Educ. of Twp. of Union, <https://www.nj.gov/education/legal/commissioner/2017/jan/13-17.pdf> (Comm’r of Educ. Jan. 12, 2017) (school district only sought tuition for 45 days during current school year despite residency violation during previous school year).

²⁸³ A.H. o/b/o B.H.G. v. Twp. of West Orange Board of Educ., supra.

²⁸⁴ K.B. o/b/o minor children v. Twp. of Branchburg Board of Educ., supra.

²⁸⁵ N.J.A.C. 6A:22-6.3(b).

²⁸⁶ J.J. o/b/o J.A.J. v. Washington Twp. Board of Educ., supra (tuition waived for period before which formal guardianship was obtained where facts indicated that grandmother attempted to obtain guardianship through a court in New Jersey per instructions of school district staff but was informed that she needed to travel to South Carolina to accomplish this; grandmother did not want student to miss school so waited until end of school year to do so; no mention of N.J.A.C. 6A:22-3.1(a)(3), allowing school attendance during six-month waiting period for State residency, noted in Section 2 of this publication); cf. M.B. and C.B. o/b/o J.B. v. Board of Educ. of the Borough of Kinnelon, supra (ALJ decision in favor of parents emphasized school district’s failure to present parents with residency policy or to inform them of possible violation until 8 months after registration form was completed; Commissioner reversed ALJ’s finding of domicile and assessed tuition without discussion of waiver). See also K.F. o/b/o T.B. and K.B. v. Board of Educ. of Hunterdon Central Regional High School Dist., 2014 WL 4785584 (N.J. Adm. Aug. 26, 2014), aff’d, <https://www.nj.gov/education/legal/commissioner/2014/oct/409-14.pdf> (Comm’r of Educ. Oct. 2, 2014) (parent failed to prove extenuating circumstances that might justify relief from tuition charge; boards “enjoy wide latitude in the exercise of discretion”).

APPENDIX

The following Appendix consists of sample forms, notices and informational documents created by the New Jersey Department of Education (NJDOE).

Note: The contents of this Appendix may currently be found on the NJDOE website at <http://www.nj.gov/njded/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.nj.gov/njded/code/current/title6a/chap22sample.doc> (Word). As of the date of this publication, proposed regulations have been issued which, when adopted, will allow for electronic filing of documents with NJDOE and simplify a few additional filing procedures. Technical revisions to the following materials (including possible changes in their website location/ URL) are likely to occur subsequent to adoption of the proposed regulations.

ATTENDANCE AT SCHOOL BASED ON DOMICILE OR RESIDENCY IN THE SCHOOL DISTRICT:

SAMPLE FORMS, NOTICES AND INFORMATIONAL DOCUMENTS

Revised January 2010

(*Pro Se* Form and Instructions at Pages 15-17 Revised April 2010)

The Department of Education has developed the following package of sample forms, notices and informational materials to facilitate implementation of the laws governing a student's right to attend public school based on domicile or residency in a school district. The package is intended to aid in the understanding of the rights and responsibilities of districts, and of persons seeking to enroll students in school, under [N.J.S.A. 18A:38-1](#) and [N.J.A.C. 6A:22](#).

Included are:

- Preliminary Information and Registration Form (N.J.A.C. 6A:22-4.1) (pages 2-9)
- Notices of Ineligibility (N.J.A.C. 6A:22-4.2) (pages 10-13)
- Statement of Compliance with Compulsory Education Law (N.J.A.C. 6A:22-4.1/2) (page 14)
- Instructions for Appeal to the Commissioner, including *Pro Se* Form (N.J.A.C. 6A:22-5.1) (pages 15-17)

Use of the registration form and ineligibility notices included in this package is *not* required. HOWEVER, any locally developed registration form MUST include the preliminary information found on pages 2-3, and may NOT request information of the type prohibited by N.J.A.C. 6A:22-3.4(d) as indicated on page 3. Additionally, any locally developed notice of ineligibility MUST comply with the requirements of N.J.A.C. 6A:22-4.2.

PRELIMINARY INFORMATION: PLEASE READ BEFORE PROCEEDING

The questions asked in the following pages will enable us to determine your student's eligibility to attend school in this district in accordance with New Jersey law. *Please be aware that N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22 require that a free public education be provided to students between the ages of 5 and 20, and to certain students under 5 and over 20 as specified in other applicable law, who are:*

- Domiciled in the district, i.e., the child of a parent or guardian, or an adult student, whose permanent home is located within the district. A home is permanent when the parent, guardian or adult 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
- Living with a person, other than the parent or guardian, who is domiciled in the district and is supporting the student without compensation, as if the student were his or her own child, because the parent cannot support the child due to family or economic hardship
- Living with a person domiciled in the district, other than the parent or guardian, where the parent/guardian is a member of the New Jersey National Guard or the reserve component of the U.S. armed forces and has been ordered into active military service in the U.S. armed forces in time of war or national emergency
- Living with a parent or guardian who is temporarily residing in the district
- The child of a parent or guardian who moves to another district as the result of being homeless
- Placed in the home of a district resident by court order pursuant to N.J.S.A. 18A:38-2
- The child of a parent or guardian who previously resided in the district but 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 relocation of the student, pursuant to N.J.S.A. 18A:38-3(b)
- Residing on federal property within the State pursuant to N.J.S.A. 18A:38-7.7 et seq.

Note that "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). Also note that a student is entitled to attend school in the district of domicile notwithstanding that the student is qualified to attend school in a different district as an "affidavit" student or temporary resident.

*Note that the following do **not** affect a student's eligibility to enroll in school:*

- Physical condition of housing or compliance with local housing ordinances or terms of lease
- Immigration/visa status, except for students holding or seeking a visa (F-1) issued specifically for the purpose of limited study on a tuition basis in a United States public secondary school
- Absence of a certified copy of birth certificate or other proof of a student's identity, although these must be provided within 30 days of initial enrollment pursuant to N.J.S.A. 18A: 36-25.1
- Absence of student medical information, although actual attendance at school may be deferred as necessary in compliance with rules regarding immunization of students, N.J.A.C. 8:57-4.1 et seq.
- Absence of a student's prior educational record, although the initial educational placement of the student may be subject to revision upon receipt of records or further assessment by the district

The following forms of documentation may demonstrate a student's eligibility for enrollment in the district. Particular documentation necessary to demonstrate eligibility under specific provisions in law will be indicated in the appropriate section of the registration form.

- Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency
- Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location
- Court orders, State agency agreements and other evidence of court or agency placements or directives
- Receipts, bills, cancelled checks and other evidence of expenditures demonstrating personal attachment to a particular location, or, where applicable, to support of the student
- Medical reports, counselor or social worker assessments, employment documents, benefit statements, and other evidence of circumstances demonstrating, where applicable, family or economic hardship, or temporary residency
- 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
- Documents pertaining to military status and assignment
- Any business record or document issued by a governmental entity
- Any other form of documentation relevant to demonstrating entitlement to attend school

The totality of information and documentation you offer will be considered in evaluating an application, and, unless expressly required by law, the student will not be denied enrollment based on your inability to provide certain form(s) of documentation where other acceptable evidence is presented.

You will *not* be asked for any information or document protected from disclosure by law, or pertaining to criteria which are not legitimate bases for determining eligibility to attend school. You may *voluntarily* disclose any document or information you believe will help establish that the student meets the requirements of law for entitlement to attend school in the district, but *we may not, directly or indirectly, require or request:*

- Income tax returns
- Documentation/information relating to citizenship or immigration/visa status, unless the student holds or is applying for an F-1 visa
- Documentation/information relating to compliance with local housing ordinances or conditions of tenancy
- Social security numbers

Please be aware that any initial determination of the student's eligibility to attend school in this district is subject to more thorough review and subsequent re-evaluation, and that tuition may be assessed in the event that an initially admitted student is later found ineligible. If your student is found ineligible, now or later, you will be provided the reasons for our decision and instructions on how to appeal.

[Optional note if district permits attendance by nonresidents on a tuition basis: State law allows school districts to admit nonresident students, through policies adopted at Board discretion, on a tuition basis. If your student is not eligible to attend school in this district free of charge, he or she may enroll on a tuition basis by ... (instructions on how to obtain more information, or register for enrollment as a nonresident student.)]

If you experience difficulties with the enrollment process, please see (name and phone number/location of administrator) for assistance.

To the Person Enrolling the Student: Please complete the appropriate section A, B, C or D below, according to the situation best matching the student's circumstances:

Complete SECTION A (DOMICILE) if the student is the child of a parent or guardian, or an adult student, whose permanent home is the address given on page 1 of this application and is located in the district.

or

Complete SECTION B ("AFFIDAVIT" STUDENT) if the student is living with a person domiciled in the district, other than the parent or guardian.

or

Complete SECTION C (TEMPORARY RESIDENT) if the student is living with a parent or guardian temporarily residing within the district.

or

Complete SECTION D (SPECIAL CIRCUMSTANCES) if the student's situation is not addressed by Section A, B or C or if any of the circumstances in Section D apply.

SECTION A (DOMICILE): Complete this section if *the student is the child of a parent or guardian, or an adult student, whose permanent home is the address given on page 1 of this application and is located in the district. If you are the student's guardian, or will be the guardian of a student from out of state following expiration of the required 6-month waiting period, you will be asked to provide official papers proving guardianship. You will not be asked to produce "affidavit student" proofs of the type requested in Section B below.*

How long have you lived in this home? _____

Do you have any present intention of moving from this home? If so, when and to where?

Do you have residences(s) elsewhere, and, if so, where are they and when do you live there? _____

Please list four forms of proof (see attached list) you will provide to demonstrate that the address given on page 1 of this application is your permanent home.

1. _____

2. _____

3. _____

4. _____

(Continued on Next Page)

SECTION A (DOMICILE) CONTINUED:

If the student's parents are domiciled in different districts, regardless of which parent has custody, please answer the following questions:

Is there a court order or written agreement between the parents designating the district for school attendance, and if so, where does it require the student to attend school? (You will be asked to provide a copy of this document.) _____

Does the student reside with one parent for the entire year? If so, with which parent and at what address? _____

If not, for what portion of time does the student reside with each parent and at what addresses? _____

If the student lives with both parents on an equal-time, alternating week/month or other similar basis, with which parent did the student reside on the last school day prior to October 16 preceding the date of this application? _____

Please note: *No district is required, as a result of being the district of domicile for school attendance purposes where a student lives with more than one parent, to provide transportation for a student residing outside the district for part of the school year, other than transportation based upon the home of the parent domiciled within the district to the extent required by law.*

If you are claiming to be an emancipated student, are you living independently in your own permanent home in the district? If yes, please describe the proofs you will provide, in addition to those demonstrating domicile, to demonstrate that you are not in the care and custody of a parent or guardian. _____

Please note: *Under New Jersey law, where a dwelling is located within two or more local 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 is that of the municipality to which the resident pays the majority of his or her property tax, or to which the majority of property tax for the dwelling in question is paid by the owner of a multi-unit dwelling.*

END OF SECTION A

SECTION B (“AFFIDAVIT” STUDENT): *Complete this section if the student is living with a person domiciled in the district, other than the parent or guardian.*

Is the person domiciled in the district, supporting the student without remuneration as if the student were his or her own child, keeping the student for a longer time than the school term and assuming all personal obligations for the student relative to school requirements? Please explain. (You will be asked to file a sworn statement, along with a copy of the person’s lease if a tenant, or a sworn landlord’s statement if a tenant without written lease.) _____

Students are not eligible to attend school as “affidavit” students unless the student’s parent or guardian is not capable of supporting or providing care for the student due to family or economic hardship, and unless it is clear that the student is not living in the district solely for purposes of receiving a public education there. Please explain the circumstances applicable in this case, with special attention to the parent/guardian’s family and/or economic hardship. (The parent/guardian will be required to file a sworn statement with documentation to support the claims made.) _____

Please note: A student will not be considered ineligible because required sworn statements(s) cannot be obtained, so long as evidence is presented that the underlying requirements of the law are being met.

A student will not be considered ineligible when evidence is presented that the student has no home or possibility of school attendance other than with a non-parent district resident who is acting as the sole caretaker and supporter of the student.

A student will not be considered ineligible solely because a parent or guardian provides gifts or 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 the student’s actual housing and support. Receipt by the resident of social security or other similar benefits on behalf of the student do not render a student ineligible.

It is not necessary that guardianship or custody be obtained before a student will be considered for enrollment on an “affidavit” basis.

END OF SECTION B

SECTION C (TEMPORARY RESIDENT): *Complete this section if the student is living with a parent or guardian temporarily residing within the district, even if the parent has a domicile elsewhere.*

How long have you lived in this residence? _____

Do you have a domicile or residences(s) elsewhere, and, if so, where are they and when do you live there? _____

Please list four forms of proof (see attached list) you will provide to demonstrate that you are residing at the address given on page 1 of this application, and that such residence is not solely for the purpose of the student attending school in the district.

1. _____

2. _____

3. _____

4. _____

Please note: Under New Jersey law, where a dwelling is located within two or more local 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 is that of the municipality to which the resident pays the majority of his or her property tax, or to which the majority of property tax for the dwelling in question is paid by the owner of a multi-unit dwelling.

If the student's parents are domiciled in different districts, regardless of which parent has custody, please answer the following questions:

Is there a court order or written agreement between the parents designating the district for school attendance, and if so, where does it require the student to attend school? (You will be asked to provide a copy of this document.) _____

Does the student reside with one parent for the entire year? If so, with which parent and at what address? _____

If not, for what portion of time does the student reside with each parent and at what addresses? _____

(Continued on Next Page)

SECTION C (TEMPORARY RESIDENT) CONTINUED:

If the student lives with both parents on an equal-time, alternating week/month or other similar basis, with which parent did the student reside on the last school day prior to October 16 preceding the date of this application? _____

Please note: No district is required, as a result of being the district of temporary residence for school attendance purposes where a student lives with more than one parent, to provide transportation for a student residing outside the district for part of the school year, other than transportation based upon the home of the parent residing within the district to the extent required by law.

END OF SECTION C

SECTION D (SPECIAL CIRCUMSTANCES): *Please indicate if any of the following apply.*

_____ The student is the child of a parent or guardian who has moved to another district as the result of being homeless.

_____ The student has been placed in the home of a district resident other than the parent or guardian by court order. (You will be required to provide a copy of the order.)

_____ The student has been placed in the district by the Department of Children and Families acting as the student's guardian.

_____ The student is a child of a parent or guardian who previously resided in the district and is a member of the New Jersey National Guard or the United States reserves ordered to active service in time of war or national emergency, resulting in relocation of the student.

_____ The student is kept in the home of a person domiciled in the district, other than the parent or guardian, and the parent/guardian 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. If this applies, when is the parent or guardian expected to return from active military duty? _____

_____ The student resides on federal property? Where? _____

_____ The student's circumstances do not appear to be addressed anywhere in this application. I understand that I will be contacted by (name of administrator or office) for further information.

END OF SECTION D

If you experience difficulties with the enrollment process, please see (name and phone number/location of administrator) for assistance.

NOTICE OF DEFECT IN APPLICATION/POTENTIAL INELIGIBILITY

(To be used in initial assessment upon presentation of student for enrollment)

DATE: _____ SCHOOL: _____

STUDENT: _____ AGE: _____

NAME OF PARENT(S)/GUARDIAN: _____

PERSON ENROLLING STUDENT: _____

RELATIONSHIP TO STUDENT IF OTHER THAN PARENT: _____

Please be advised that, although the above-named student is being accepted for enrollment on a preliminary basis, **the enrollment application you have submitted has defects as noted below. If these defects are not corrected within the specified time, you will be notified that, unless you file an appeal, the student will be removed from school.** If that occurs, you will be provided with information on how to appeal the removal to the Commissioner of Education.

On or before [DATE], please submit further evidence of:

[In each applicable area, briefly specify what is needed.]

_____ Domicile/Residency at address where you claim to live

_____ Guardianship or custody of student

_____ Proof that you are supporting student financially and/or that parents are incapable of caring for student due to family or economic hardship (applies *only* to residents enrolling students of whom they are not parents or guardians/custodians)

If you have any questions, please see (designated administrator) or call him/her at (phone number) between the hours of (time). The information requested above should be submitted to (name) at (address).

NOTICE OF INITIAL DETERMINATION OF INELIGIBILITY

*(To be used after more thorough review of applications for enrollment or review of currently enrolled students)
(In English and Native Language of Applicant)*

DATE: _____ SCHOOL: _____

STUDENT: _____ AGE: _____

NAME OF PARENT(S)/GUARDIAN: _____

PERSON ENROLLING STUDENT: _____

RELATIONSHIP TO STUDENT IF OTHER THAN PARENT: _____

Our review of the domicile/residency status of the above-named student indicates that the student is not entitled to a free education in the district for the reason(s) indicated below:

_____ Domicile/Residency not in the district because:

_____ Insufficient proof that you are supporting student financially and/or that parents are incapable of caring for student due to family or economic hardship because: *(Applies only to residents enrolling students of whom they are not parents or guardians/custodians)*

_____ Other:

If you accept these reasons, the student will be removed from school in this district and you are advised that State compulsory education law requires you to ensure that any student between the ages of 6 and 16 is enrolled in public or private school or receives instruction elsewhere than at a school (home schooling). In the absence of your written indication that the student will be receiving education in compliance with that law, we will contact the school district of your domicile or residence, or the Department of Children and Families (DCF), to provide the student's name and your name/address, so as to ensure that the student receives an education as required by law.

If you do not accept these reasons, you may request a hearing before the Board of Education and the student will be permitted to continue in school until the Board makes its determination following the hearing. At the hearing, you may present additional evidence in support of your claim, and the Board will notify you in writing of its final determination. If the Board finds the student ineligible, you will be given information on how to appeal the Board's decision to the Commissioner of Education and advised of your rights and responsibilities with regard to the student's continued attendance at school, as well as of the possibility of tuition assessment.

On or before *(date)*, please contact *(designated administrator)* at *(phone number)* between the hours of *(time)* to indicate whether the student will be removed from school and educated elsewhere, or whether you will be requesting a hearing before the Board to demonstrate that the student is entitled to attend school in this district. If we do not hear from you, the student will be removed and contact will be made to ensure compliance with compulsory education law as indicated above.

Attachment: Statement of Compliance with Compulsory Education Law

NOTICE OF FINAL INELIGIBILITY
(In English and Native Language of Applicant)

Date

Applicant

Address where s/he claims to reside

Dear _____ :

We have carefully reviewed the application for enrollment of *(student's name)* in the *(name)* School District, as well as all information submitted in support of the application, and have determined that *(student)* is ineligible to attend the schools of the district.

We have made this determination based on the following:

[Here state the specific basis on which the determination of ineligibility was made, sufficient to allow the applicant to understand the reasons for the district's decision and determine whether appeal is appropriate. Include a reference to the specific section of N.J.S.A. 18A:38-1 under which the application was decided, for example, 18A:38-1(a), domicile, or 18A:38-1(b), "affidavit" status.]

For example: An inspection of the apartment where you claim to be domiciled has revealed that your wife and children do not live there, and that you use the apartment only occasionally. Instead, we have determined that your family is, in fact, domiciled in Smith Town, where you own a home, are registered to vote, and were observed on several mornings leaving the house with your children to drive them to school in our district. Therefore, we have concluded that, in accordance with N.J.S.A. 18A:38-1(a), your children are entitled to attend school in the Smith School District, not the (Name) School District.

Another example: The information you have provided indicates that, although your niece is living with you, she is being supported by her parents, who pay for her food, clothing, medical care and incidental expenses. Therefore, she does not meet the standard established by N.J.S.A. 18A:38-1(b) for eligibility of students not living with parents or guardians to attend school in our district, since you are not supporting her gratis as if she were your own child. Instead, it appears that she should be attending school in the Smith School District, where her parents reside.

If you believe the district's determination is in error, you have the right to appeal it to the Commissioner of Education within 21 days of the date of this notice. *(Student)* will be permitted to attend school during this period, and to continue in attendance while the appeal is pending before the Commissioner. However, if no appeal is filed by the 21st day following the date of this notice, *(student)* will be removed from school, you will be asked to indicate where s/he will be educated (see below) and we may assess you tuition at the rate of *(rate calculated pursuant to N.J.A.C. 6A:22-6)* for each day *(name)* attended school during this period. Information on how to appeal to the Commissioner is included with this letter.

Please be aware that, if you appeal to the Commissioner but abandon your appeal through withdrawal, failure to prosecute or any means other than settlement with the district and/or (the student) is found not to be entitled to free education in the district, you may be assessed tuition for any period of (student's) ineligible attendance, including the initial 21-day filing period and the period during which the appeal was pending before the Commissioner. The Commissioner assesses such tuition, which will be calculated at the approximate rate of (rate calculated pursuant to N.J.A.C. 6A:22-6), through an order enforceable against you in Superior Court.

[If applicable, describe any discretionary policy the district may have that would permit continued attendance, with or without tuition, for students who move from the district but wish to remain for the school year or longer, and provide information on how to make arrangements for such attendance].

If you do not intend to appeal the district's determination, please advise (appropriate office or administrator) as soon as possible, but in no event later than 21 days from the date of this notice, so that (student's) removal can be effectuated promptly and arrangements can be made for his/her education elsewhere. State statute on compulsory education requires you to ensure that any student who is between the ages of 6 and 16 is enrolled in a public or private school or receives instruction elsewhere than at a school. Therefore, unless you indicate to us by returning the form below that (student) will be receiving an education, we will contact the school district of your actual domicile or residence, or the Department of Children and Families (DCF), with (student's) name, and your name and address, in order to ensure compliance with the law.

If you have any questions about this notice, please see (designated administrator) or call him/her at (phone number) between the hours of (time). We anticipate hearing from you regarding either (student's) removal and education elsewhere, or your intent to appeal the Board's determination of ineligibility to the Commissioner of Education.

Sincerely yours,

[Signature]

Chief School Administrator

Attachments: Appeal Form with Instruction Sheet
Statement of Compliance with Compulsory Education Law

DIRECTIONS FOR APPEALING A LOCAL BOARD'S RESIDENCY DETERMINATION TO THE COMMISSIONER OF EDUCATION

Statute provides for appeals of school district residency determinations to be filed within **21 days of the date of the district's decision**.^{*} Therefore, time is of the essence and persons seeking to appeal should, if necessary, receive assistance from their county offices of education. Please note that where appeal is taken from a determination of ineligibility under *N.J.S.A. 18A:38-1(b)1* ("affidavit" students), such appeal shall be filed by the resident making the claim of entitlement, not by the parent or guardian.

There are two ways in which a parent/guardian/resident/adult student may file an appeal with the Commissioner: 1) He/she may submit a standard Petition of Appeal in accordance with *N.J.A.C. 6A:3-1.3 and 1.4*, or **2) in the case of a petitioner acting without legal representation ("pro se"), he/she may instead submit a letter petition** in accordance with *N.J.A.C. 6A:3-8.1*. Both methods of filing are described below. In either case, petitioners should be aware that they are initiating an agency hearing procedure where they, or their counsel, will most likely be required to present testimony and evidence in support of their claim before a judge of the Office of Administrative Law (OAL). For more information about this process, petitioners are urged to visit the OAL website at <http://www.state.nj.us/oal/hearings.html>.

STANDARD PETITION OF APPEAL (N.J.A.C. 6A:3-1.3 and 1.4)

The regulations for filing Petitions of Appeal may be obtained at a library, the local school district, the county office of education, the Department of Education's web site (at <http://www.state.nj.us/njded/code/title6a/chap3/>) or by mail from the Bureau of Controversies and Disputes (609-292-5706).

A standard Petition of Appeal includes: 1) The **petition** itself; 2) a **verification** and 3) **proof that petitioner has served the respondent** (Board of Education) with a copy of the Petition of Appeal.

Petition: A petition is a written document, submitted in original with two copies, including the following:

- a. Name, address, telephone number and fax number, if available, of the petitioner;
- b. Name and address of the respondent (Board of Education);
- c. Petitioner's allegations and specific facts supporting them;
- d. Signature of the petitioner, or his/her attorney; and
- e. Date when the petition is prepared.

Verification: A petition must verify the facts alleged. This means that the petitioner must write or type the statement contained in *N.J.A.C. 6A:3-1.4* indicating that he/she, as petitioner, attests that the facts contained in the petition are true to the best of his/her knowledge. He/she must then sign the statement and have it notarized.

Proof of Service: A copy of the petition must be served upon each respondent (*N.J.A.C. 6A:3-1.3*). In the case of residency disputes, the Board of Education will be served. A copy should be submitted to the office of the Board Secretary, or the Board's attorney, if known. *The petitioner should also submit to the Bureau of Controversies and Disputes, with the Petition of Appeal, proof that respondent was served.* That proof may be:

- a. An acknowledgment of service (a "receipt") signed by the attorney for the respondent (Board), or signed and acknowledged by the respondent (Board) or its agent (e.g. the Board Secretary) indicating the address at which the respondent was served;
- b. A sworn affidavit of the person making service (mailing or delivering the petition), indicating the address at which the respondent was served and the date and manner of service;

^{*} Where an appeal is filed within 21 days of the date of the district's decision, *N.J.S.A. 18A:38-1* provides that no child shall be denied admission during the pendency of the proceedings before the Commissioner. The child shall not be removed from school during the 21-day period in which the interested party may contest the district's decision. However, if in the judgment of the Commissioner the evidence does not support the claim of the petitioner, or if the appeal is withdrawn or abandoned, the Commissioner the petitioner may be assessed tuition for the student prorated to the time of the student's ineligible attendance in the school district. Appeals may be filed after expiration of the 21-day period, but the student's right to attend school during the pendency of the appeal is not guaranteed by operation of statute and the petitioner must submit an application for emergent relief in accord with *N.J.A.C. 6A:3-1.6*.

- c. A certificate of service signed by the attorney making service (mailing or delivering the petition) indicating the address at which the respondent was served;
- d. A copy of petitioner’s receipt for certified mailing to respondent. The return receipt (green card) is not required for proof of service.

Upon receipt, the Bureau of Controversies and Disputes will acknowledge the petition in writing and notify the school district and county superintendent of its filing.

LETTER PETITION (N.J.A.C. 6A:3-8.1)

Petitioners who are *not* represented by an attorney (“*pro se*”) may submit a letter petition, instead of the standard Petition of Appeal as described above, *provided that the letter contains the following information:*

- a. Petitioner’s name, address, telephone number, and fax number where available;
- b. The name of the respondent board of education;
- c. A clear indication that the petitioner is appealing a determination of ineligibility to attend school in the district based on residency or domicile, identifying the date of the district’s decision, and including, where possible, a copy of the district’s written determination of ineligibility; and
- d. A signed statement that the petitioner’s claim of entitlement is based upon facts which are true to the best of the petitioner’s knowledge and belief, and that the petitioner understands that s/he may be assessed tuition through an order enforceable in Superior Court and recordable as a judgment against him/her if the claim is abandoned or withdrawn and/or if the Commissioner finds the student ineligible for free education in the district.

Please Note: Sample letter petition forms are available from your school district, the Office of the County Superintendent, the Bureau of Controversies and Disputes, or on page 17 of the Department’s Informational Package at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word).

Appeals from *pro se* petitioners need not be served upon the respondent district Board of Education. While *pro se* petitioners *may* serve their petitions on the Board, **they may also effectuate service through the Bureau of Controversies and Disputes.** Upon receipt of any *pro se* residency appeal which has not been served on the Board, the Bureau will transmit a copy of the letter petition to the board and county superintendent via fax, together with notice of the Board’s obligation to answer the letter petition pursuant to *N.J.A.C. 6A:3-1.5* and to ensure, as required by *N.J.S.A. 18A:38-1*, the attendance of petitioner’s child(ren) pending the outcome of the appeal.

* * * * *

ALL PETITIONS SHOULD BE SUBMITTED TO:

**Commissioner of Education
c/o Director of the Bureau of Controversies and Disputes
New Jersey State Department of Education
P.O. Box 500
Trenton, NJ 08625-0500**

A petition may be faxed, with hard copy following by mail, to 609-292-4333.

Following submission of a proper petition, the board will be required to file an answer and, in most cases, the next step will be a hearing before a judge at the Office of Administrative Law, leading to an initial decision containing the judge’s recommended findings of fact and conclusions of law. The Commissioner will then review the matter and issue a final decision, which may be appealed to the Appellate Division of the Superior Court.

Please Note: These instructions do not constitute legal advice, nor are they meant to take the place of applicable statute or regulation, which should be consulted by petitioners and will control if procedural issues arise in any appeal. These instructions are intended solely as an aid preparation and submission of a petition of appeal.

PRO SE RESIDENCY APPEAL:
N.J.S.A. 18A:38-1/N.J.A.C. 6A:3-8.1/N.J.A.C. 6A:22

To: Commissioner of Education
c/o Director, Bureau of Controversies and Disputes
New Jersey State Department of Education
100 Riverview Plaza
P.O. Box 500
Trenton, NJ 08625

Fax: (609) 292-4333

Dear Commissioner: (Please Print or Type)

1. My name is _____.

2. My address is: _____
Number Street Town/City Zip Code

3. My phone number is (_____) _____
Area Code Number Fax If Available

4. The _____ School District located
in _____
Town/City County

will not allow the following child/ren, who reside with me, to attend school under N.J.S.A. 18A:38-1.
List name(s) of child/ren and your relationship to them (i.e., parent, guardian/custodian, other).

5. Give a brief explanation of why attendance is being denied, including date of district's decision.
Please attach, if possible, a copy of district's written determination. (Additional sheets may be used.)

6. With this letter, I am appealing the district's decision. My claim of entitlement is based upon facts which are true to the best of my knowledge. I understand that if the Commissioner finds that I have abandoned or withdrawn this appeal and/or that the child/ren are ineligible for a free education in this district, I may be assessed tuition costs for the period of the child/ren's ineligible attendance and such assessment may be enforced, or recorded as a judgment against me, in Superior Court.

Signature

Date