

## **Chapter 22**

### **STUDENT RESIDENCY**

#### **SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS**

##### **6A:22-1.1 Purpose and scope**

(a) The rules in this chapter have been adopted to implement the provisions of N.J.S.A. 18A:38-1(a) through (e). Other than by reference to the applicable statutes and rules, the chapter does not address attendance at school by nonresidents (N.J.S.A. 18A:38-3(a)), children of certain military parents (N.J.S.A. 18A:38-3(b)), children residing on Federal property (N.J.S.A. 18A38-7.7 et seq.), or persons qualifying under N.J.S.A. 18A:38-1(f), which provides for attendance by homeless students and is implemented through N.J.A.C. 6A:17-2, Education of Homeless Children.

(b) The provisions of this chapter shall apply to students over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, and to such younger or older students as are otherwise entitled by law to free public education.

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

##### **6A:22-1.2 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the content clearly indicates otherwise.

"Affidavit student" means a student attending, or seeking to attend, school in a district pursuant to N.J.S.A. 18A:38-1(b) and N.J.A.C. 6A:22-3.1(a)2.

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

"Commissioner" means the Commissioner of Education or his or her designee.

"Guardian" means a person to whom a court of competent jurisdiction has awarded guardianship or custody of a child, provided that a residential custody order shall entitle a child to attend school in the residential custodian's school district subject to a rebuttable presumption that the child is actually living with such custodian. It also means the Department of Children and Families for purposes of N.J.S.A. 18A:38-1(e).

## **SUBCHAPTER 2. DISTRICT BOARD OF EDUCATION POLICIES**

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

(a) Each district board of education shall adopt written policies and procedures incorporating the requirements of this chapter and shall make copies available to parents and the public.

(b) In all such policies and procedures, a district board of education shall construe the provisions of this chapter liberally so as to effectuate the constitutional and statutory right of students to a free public education.

### **6A:22-2.2 Discretionary admission of nonresident students**

Nothing in this chapter shall be construed to limit the discretion of a district board of education to admit nonresident students, or the ability of a nonresident student to attend

school, with or without payment of tuition, with the consent of the district board of education, pursuant to N.J.S.A. 18A:38-3(a).

### **SUBCHAPTER 3. ELIGIBILITY TO ATTEND SCHOOL**

#### **6A:22-3.1 Students domiciled within the school district**

(a) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in a school district if the student is domiciled within the district.

1. A student is domiciled in the school district when he or she is the child of a parent or guardian whose permanent home is located within the school district. A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.

i. Where a student's parents or guardians are domiciled within different school districts, and where there is no court order or written agreement between the parents designating the school district for school attendance, the student's domicile is the school district of the parent or guardian with whom the student lives for the majority of the school year, regardless of which parent has legal custody.

ii. Where a student's physical custody is shared on an equal-time, alternating week/month or other similar basis such that the student is not living with one parent or guardian for a majority of the school year, and where there is no court order or written

agreement between the parents designating the school district for school attendance, the student's domicile is the present domicile of the parent or guardian with whom the student resided on the last school day prior to October 16 preceding the date of the application.

(1) Where such a student resided with both parents or guardians, or with neither parent or guardian, on the last school day prior to the preceding October 16, the student's domicile is the domicile of the parent or guardian with whom the parents or guardians indicate the student will be residing on the last school day prior to the ensuing October 16. Where the parents or guardians do not designate, or cannot agree upon, the student's likely residence as of that date, or if on that date the student is not residing with the parent or guardian previously indicated, the student shall attend school in the school district where the parent or guardian with whom the student is actually living as of the last school day prior to October 16 is domiciled.

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

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

iv. No school district shall be required to provide transportation for a student residing outside the school district for all or part of the school year, other than that based upon the home of the parent or guardian domiciled within the district to the extent required by law, as a result of being the district of domicile for school attendance purposes pursuant to the provisions of this chapter.

2. A student is domiciled in the school district when he or she has reached the age of 18 or is emancipated from the care and custody of a parent or guardian and has established a permanent home within the district. A home is permanent when the student intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.

3. A student is domiciled in the school district when the student has come from outside the State and is living with a person domiciled in the district who will be applying for guardianship of the student upon expiration of the six-month "waiting period" of State residency required pursuant to N.J.S.A. 2A:34-30(e) and 2A:34-31. However, any such student may later be subject to removal proceedings if application for guardianship is not made within a reasonable period of time following expiration of the mandatory waiting period, or if guardianship is applied for and denied.

4. A student is domiciled in the school district when his or her parent or guardian resides within the district on an all-year-round basis for one year or more, notwithstanding the existence of a domicile elsewhere.

5. A student is domiciled in the school district if the Department of Children and Families is acting as the student's guardian and has placed the student in the district.

(b) Where a student's dwelling is located within two or more school districts, or bears a mailing address that does not reflect the dwelling's physical location within a municipality, the district of domicile for school attendance purposes shall be that of the municipality to which the majority of the dwelling's property tax is paid, or to which the majority of the unit's property tax is paid by the owner of a multi-unit dwelling.

1. Where property tax is paid in equal amounts to two or more municipalities, and where there is no established assignment for students residing in the affected dwellings, the district of domicile for school attendance purposes shall be determined through assessment of individual proofs as provided pursuant to N.J.A.C. 6A:22-3.4.

2. This provision shall not preclude the attendance of currently enrolled students who were permitted to attend school in the school district prior to the provision's initial promulgation on December 17, 2001.

(c) Where a student's parent or guardian elects to exercise such entitlement, nothing herein is intended to foreclose a student's entitlement to attend school in the district of domicile notwithstanding that the student is qualified to attend school in a different

district pursuant to N.J.S.A. 18A:38-1 (b) or the temporary residency (less than one year) provision of N.J.S.A. 18A:38-1 (d).

**6A:22-3.2 Other students eligible to attend school**

(a) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(b) if the student is kept in the home of a person other than the student's parent or guardian, where the person is domiciled in the school district and is supporting the student without remuneration as if the student were his or her own child.

1. A student is not eligible to attend school in a school district pursuant to this provision unless:

i. The student's parent or guardian has filed, together with documentation to support its validity, a sworn statement that he or she is not capable of supporting or providing care for the student due to family or economic hardship and that the student is not residing with the other person solely for the purpose of receiving a free public education; and

ii. The person keeping the student has filed, if so required by the district board of education:

(1) A sworn statement that he or she is domiciled within the school district, is supporting the child without remuneration and intends to do so for a longer time than the school term, and will assume all personal obligations for the student relative to school requirements; and

(2) A copy of his or her lease if a tenant, or a sworn landlord's statement if residing as a tenant without written lease.

2. A student shall not be deemed ineligible under this provision because required sworn statements(s) cannot be obtained, where evidence is presented that the underlying requirements of the law are being met notwithstanding the inability of the resident or student to obtain the sworn statement(s).

3. A student shall not be deemed ineligible under this provision where evidence is presented that the student has no home or possibility of school attendance other than with a district resident who is not the student's parent or guardian but is acting as the sole caretaker and supporter of the student.

4. A student shall not be deemed ineligible under this subsection solely because a parent or guardian gives gifts or makes limited contributions, financial or otherwise, toward the welfare of the student, provided that the resident keeping the student receives no payment or other remuneration from the parent or guardian for regular maintenance of the student.

5. Pursuant to N.J.S.A. 18A:38-1(c) any person who fraudulently allows a child of another person to use his or her residence and is not the primary financial supporter of that child and any person who fraudulently claims to have given up custody of his or her child to a person in another district commits a disorderly persons offense.

(b) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(b) if the student is kept in the home of a person domiciled in the district, other than the parent or guardian, where the parent or guardian is a member of the New Jersey National Guard or the reserve component of the United States armed forces and has been ordered into active military service in the United States armed forces in time of war or national emergency.

1. Eligibility under this subsection shall cease at the end of the current school year upon the parent or guardian's return from active military duty.

(c) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(d) if the student's parent or guardian temporarily resides within the district and elects to have the student attend school in the district of temporary residence, notwithstanding the existence of a domicile elsewhere.

1. Where required by the district board of education, the parent or guardian shall demonstrate that such temporary residence is not solely for purposes of a student's attending school within the school district of temporary residence;

2. Where one of a student's parents or guardians temporarily resides in a school district while the other is domiciled or temporarily resides elsewhere, eligibility to attend school shall be determined in accordance with the criteria of N.J.A.C. 6A:22-3.1(a)li. However, no student shall be eligible to attend school based upon a parent or guardian's temporary residence in a district unless the parent or guardian demonstrates, if so required by the district board of education, that such temporary residence is not solely for purposes of a student's attending school within the district.

(d) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-1(f) if the student's parent or guardian moves to another district as the result of being homeless, subject to the provisions of N.J.A.C. 6A:17-2, Education of Homeless Children.

(e) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-2 if the student is placed in the home of a district resident by court order or by a society, agency or

institution as referenced in that statute. “Court order” as used in this paragraph does not encompass orders of residential custody, under which claims of entitlement to attend school in a district are governed by the provisions of N.J.S.A. 18A:38-1 and the applicable standards set forth in this chapter.

(f) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-3(b) if the student had previously resided in the district and if the parent or guardian is a member of the New Jersey National Guard or the United States reserves and has been ordered to active service in time of war or national emergency, resulting in the relocation of the student out of the district. A school district admitting a student pursuant to N.J.S.A. 18A:38-3(b) shall not be obligated for transportation costs.

(g) A student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, is eligible to attend school in the school district pursuant to N.J.S.A. 18A:38-7.7 et seq. if the student resides on Federal property within the State.

### **6A:22-3.3 Housing and immigration status**

(a) The physical condition of an applicant’s housing, or an applicant’s compliance with local housing ordinances or terms of lease, shall not affect eligibility to attend school.

(b) Except as set forth in (b)1 below, immigration/visa status shall not affect eligibility to attend school. Any student over five and under 20 years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to free public education, who is domiciled in the district or otherwise eligible to attend school there pursuant to N.J.S.A. 6A:22-3.2 shall be enrolled without regard to, or inquiry concerning, immigration status.

1. The provisions of N.J.S.A. 18A:38-1 and this chapter shall not apply to students who have obtained, or are seeking to obtain, a Certificate of Eligibility for Nonimmigrant Student Status (INS form I-20) from the district in order to apply to the INS for issuance of a visa for the purpose of limited study on a tuition basis in a United States public secondary school (“F-1” visa).

i. Districts permitting the attendance of F-1 students may adopt policies and procedures requiring advance payment of tuition, or entry into binding agreements for payment of tuition, before the district will provide the requested I-20 form.

#### **6A:22-3.4 Proof of eligibility**

(a) A district board of education shall accept a combination of any of the following or similar forms of documentation from persons attempting to demonstrate a student’s eligibility for enrollment in the school district:

1. Property tax bills, deeds, contracts of sale, leases, mortgages, signed letters from landlords and other evidence of property ownership, tenancy or residency;

2. Voter registrations, licenses, permits, financial account information, utility bills, delivery receipts, and other evidence of personal attachment to a particular location;

3. Court orders, State agency agreements and other evidence of court or agency placements or directives;

4. Receipts, bills, cancelled checks, insurance claims or payments, and other evidence of expenditures demonstrating personal attachment to a particular location, or, where applicable, to support of the student;

5. Medical reports, counselor or social worker assessments, employment documents, unemployment claims, benefit statements, and other evidence of circumstances demonstrating, where applicable, family or economic hardship, or temporary residency;

6. Affidavits, certifications and sworn attestations pertaining to statutory criteria for school attendance, from the parent, guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others as appropriate;

7. Documents pertaining to military status and assignment; and

8. Any other business record or document issued by a governmental entity.

(b) A district board of education may accept forms of documentation not listed above, and shall not exclude from consideration any documentation or information presented by a person seeking to enroll a student.

(c) A district board of education shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a particular form of documentation, or a particular subset of documents, without regard to other evidence presented.

(d) A district board of education shall not require or request, as a condition of enrollment in school, any information or document protected from disclosure by law, or pertaining to criteria which are not legitimate bases for determining eligibility to attend school. These include but are not limited to:

1. Income tax returns;
2. Documentation or information relating to citizenship or immigration/visa status, except as set forth in N.J.A.C. 6A:22-3.3(b);
3. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and
4. Social security numbers.

(e) Documents or information of the type referenced in (d) above, or pertinent parts thereof, may be considered by the district board of education if voluntarily disclosed by the applicant seeking enrollment. However, the district board of education may not, directly or indirectly, require or request such disclosure as an actual or implied condition of enrollment.

#### **SUBCHAPTER 4. INITIAL ASSESSMENT AND ENROLLMENT**

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

(a) Each district board of education shall use registration forms provided by the Commissioner (at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word)) or locally developed forms that:

1. Are consistent with the forms provided by the Commissioner;
2. Do not seek information prohibited by this subchapter or any other provision of statute or rule;
3. Summarize the criteria for attendance set forth in N.J.S.A. 18A:38-1 for applicant reference, and specify the nature and form of any sworn statements to be filed;
4. Clearly state the purpose, in relation to such criteria, for which requested information is being sought; and

5. Provide notice to applicants that any initial determination of eligibility is subject to more thorough review and re-evaluation, and that there is a potential for assessment of tuition in the event that an initially admitted applicant is later found ineligible.

(b) Each district board of education shall ensure that sufficient numbers of registration forms, and sufficient numbers of trained registration staff, are available to ensure prompt determinations of eligibility and enrollment. Applications for enrollment may be taken by appointment, but such appointments must be promptly scheduled and may not unduly defer a student's attendance at school.

1. If the school district uses separate forms for "affidavit student" applications, rather than a single form for all types of application for enrollment, such forms shall comply in all respects with the provisions of (a) above. Where such forms are used, the district shall provide them to any person attempting to register a student of whom he or she is not the parent or guardian, whether or not they are specifically requested.

i. District boards of education or their agents shall not demand or suggest that guardianship or custody must be obtained before enrollment will be considered for a student living with a person other than the parent or guardian, since such student may qualify as an "affidavit student."

ii. District boards of education or their agents shall not demand or suggest that "affidavit student" proofs be produced by an applicant seeking to enroll a student of whom the applicant has guardianship or custody.

2. A district level school administrator designated by the chief school administrator shall be available, and clearly identified to applicants, to assist persons who are experiencing difficulties with the enrollment process.

(c) Initial determinations of eligibility shall be made upon presentation of an application for enrollment, and enrollment shall take place immediately in all cases except those of clear, uncontested denials.

1. Where an applicant has provided incomplete, unclear or questionable information, enrollment shall take place immediately, but the applicant shall be placed on notice that removal will result if defects in the application are not corrected, or an appeal is not filed, in accordance with subsequent notice to be provided pursuant to N.J.A.C. 6A:22-4.2.

2. Where a student appears ineligible based on information provided in the initial application, a preliminary written notice of ineligibility shall be provided, including an explanation of the right to appeal to the Commissioner, and enrollment shall take place immediately if the applicant clearly indicates disagreement with the district's determination and an intent to appeal to the Commissioner.

i. An applicant whose student is enrolled pursuant to this paragraph shall be notified that the student will be removed, without hearing before the district board of education, if no appeal is filed within the 21-day period established by N.J.S.A. 18A:38-1.

(d) Where enrollment is denied and no intent to appeal is indicated, applicants shall be advised that they shall comply with compulsory education laws and shall, where the student is between the ages of 6 and 16, be asked to complete a written statement indicating that the student will be attending school in another school district, attending a nonpublic school, or receiving instruction elsewhere than at a school pursuant to N.J.S.A. 18A:38-25. In the absence of a written statement from the parent or guardian that the student will be attending school in another school district, attending a nonpublic school, or receiving instruction elsewhere than at a school, for purposes of ensuring compliance with compulsory education laws, designated staff shall contact the school district of actual domicile or residence, or the Department of Children and Families to report a potential instance of “neglect” pursuant to N.J.S.A. 9:6-1 (“willfully failing to provide regular school education as required by law”). Such staff shall provide the district or Department, as the case may be, with the student’s name, the name(s) of the parent/guardian/resident, and the student’s address to the extent known, and shall indicate that admission to the district has been denied based on residency or domicile, and that there is no evidence of intent to arrange for the child to attend school or receive instruction elsewhere.

(e) Where enrollment is denied and an intent to appeal is indicated, or where enrollment is provisional subject to further review or information, enrollment or attendance at school shall not be conditioned on advance payment of tuition in whole or part.

(f) Each district board of education shall ensure that information suggesting an applicant may be homeless is identified during the registration process, so that, where appropriate, procedures may ensue in accordance with N.J.A.C. 6A:17-2, Education of Homeless Children.

(g) Enrollment or attendance in the school district shall not be denied based upon absence of the certified copy of birth certificate or other proof of a student's identity required within 30 days of initial enrollment pursuant to N.J.S.A. 18A: 36-25.1.

(h) Enrollment in the school district shall not be denied based upon absence of student medical information, although actual attendance at school may be deferred as necessitated by compliance with rules regarding immunization of students, N.J.A.C. 8:57-4.1 et seq.

(i) Enrollment in the school district, attendance at school, or educational services where attendance in the regular education program appears inappropriate, shall not be denied based upon absence of a student's prior educational record. However, the

applicant shall be advised that the initial educational placement of the student may be subject to revision upon receipt of records or further assessment of the student by the district.

**6A:22-4.2 Notices of ineligibility**

(a) Where the subject of an initial application is found ineligible to attend the schools of the district pursuant to this chapter, or the application initially submitted is found to be deficient upon subsequent review or investigation, notice shall immediately be provided to the applicant consistent with sample form(s) to be provided by the Commissioner (at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) and <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word)) and meeting the requirements of this section.

1. Notices shall be in writing, in English and in the native language of the applicant, issued by the chief school administrator and directed to the address at which the applicant claims to reside.

(b) Notices of ineligibility shall include:

1. In cases of denial, a clear description of the specific basis on which the determination of ineligibility was made, sufficient to allow the applicant to understand the basis for the decision and determine whether to appeal;

i. Such description shall identify the specific section of N.J.S.A. 18A:38-1 under which the application was decided.

2. In cases of provisional eligibility, a clear description of the missing documents or information that shall be provided in order to attain final eligibility status under the applicable provision of N.J.S.A. 18A:38-1;

3. A clear statement of the applicant's right to appeal to the Commissioner within 21 days of the date of the notice, along with an informational document to be provided by the Commissioner describing how to file an appeal;

4. A clear statement that the student is entitled to attend school for the 21-day period during which an appeal can be made to the Commissioner, but that, if missing information is not provided or an appeal is not filed, the student will not be permitted to attend school beyond the 21<sup>st</sup> day following the date of the notice;

5. A clear statement that the student is entitled to continue attending school during the pendency of an appeal to the Commissioner;

6. A clear statement that, if an appeal is filed with the Commissioner and the applicant does not sustain the burden of demonstrating the student's entitlement to attend the schools of the district, or the applicant abandons the appeal through withdrawal, failure to prosecute or any means other than settlement, the applicant may be assessed, by

order of the Commissioner enforceable in Superior Court, tuition for any period of ineligible attendance, including the initial 21-day period and the period during which the appeal was pending before the Commissioner;

7. A clear statement of the approximate rate of tuition, pursuant to N.J.A.C. 6A:22-6.3, that an applicant may be assessed for the year at issue if the applicant does not prevail on appeal, or elects not to appeal;

i. If removal is based on the student's having moved from the school district, the notice of ineligibility shall also provide information as to whether district policy permits continued attendance, with or without tuition, for students who move from the district during the course of the school year.

8. The name of a contact person in the district who can provide assistance in explaining the contents of the notice; and

9. Notice that, where no appeal is filed, the parent or guardian shall still comply with compulsory education laws, and that, in the absence of a written statement from the parent or guardian that the student will be attending school in another school district, attending a nonpublic school, or receiving instruction elsewhere than at a school, district staff shall notify the school district of actual domicile/residence, or the Department of Children and Families of a potential instance of "neglect" pursuant to N.J.S.A. 9:6-1 ("willfully failing to provide regular school education as required by law"). Such staff

shall provide the student's name, the name(s) of the parent/guardian/resident, address to the extent known, denial of admission to the district based on residency or domicile, and absence of evidence of intent to attend school or receive instruction elsewhere, for purposes of facilitating enforcement of the State compulsory education requirement (N.J.S.A. 18A:38-25).

#### **6A:22-4.3 Removal of currently enrolled students**

(a) Nothing in this subchapter shall preclude a district board of education from seeking to identify, through further investigation or periodic requests for current validation of previously determined eligibility status, students enrolled in the school district who may be ineligible for continued attendance due to error in initial assessment, changed circumstances or newly discovered information.

(b) When a student, enrolled and attending school in the school district based on an initial determination of eligibility, is later determined to be ineligible for continued attendance, the chief school administrator may apply to the district board of education for removal of the student.

1. The chief school administrator shall issue a preliminary notice of ineligibility meeting the requirements of N.J.A.C. 6A:22-4.2. However, such notice shall also provide for a hearing before the district board of education prior to a final decision on removal.

(c) No student shall be removed from school unless the parent, guardian, adult student or resident keeping an "affidavit student," as the case may be, has been informed of his or her entitlement to a hearing before the board of education.

(d) Once the hearing is held, or if the parent, guardian, adult student or resident keeping an "affidavit student," as the case may be, does not respond to the chief school administrator's notice within the designated time frame or appear for hearing, the district board of education shall make a prompt determination of the student's eligibility or ineligibility and shall immediately provide notice thereof in accordance with the requirements of N.J.A.C. 6A:22-4.2.

(e) Hearings required pursuant to this subchapter may be conducted, if board policy so provides, by a committee of the district board of education which shall then make a recommendation to the full board; however, no student may be removed except by vote of the district board of education taken at a meeting duly convened and conducted pursuant to N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act.

## **SUBCHAPTER 5. APPEAL OF INELIGIBILITY DETERMINATIONS**

### **6A:22-5.1 Appeal to the Commissioner**

(a) A school district determination that a student is ineligible to attend the schools of the district may be appealed to the Commissioner by the parent, guardian, adult student or resident keeping an "affidavit student," as the case may be. Such appeals shall be initiated by a petition of appeal, which shall be filed in accordance with N.J.S.A. 18A:38-

1 and N.J.A.C. 6A:3-8.1 et seq. and shall proceed as a contested case pursuant to N.J.A.C. 6A:3.

1. Pursuant to N.J.S.A. 18A:38-1(b)1, appeals of "affidavit student" ineligibility determinations shall be filed by the resident keeping the student.

## **SUBCHAPTER 6. ASSESSMENT AND CALCULATION OF TUITION**

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

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

1. If the responsible party does not pay the tuition assessment, the district board of education may petition the Commissioner pursuant to N.J.A.C. 6A:3 for an order assessing tuition, enforceable in accordance with N.J.S.A. 2A:58-10 through recording, upon request of the district board pursuant to N.J.A.C. 6A:3-12, on the judgment docket of the Superior Court, Law Division.

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

(a) If an appeal to the Commissioner is filed by the parent, guardian, adult student or district resident keeping an "affidavit" student, where the petitioner does not sustain the burden of demonstrating entitlement to attend the schools of the district, or abandons the

appeal through withdrawal, failure to prosecute or any means other than settlement agreeing to waive or reduce tuition, the Commissioner may order assessment of tuition for any period of a student's ineligible attendance in a school district, including the 21-day period for filing of an appeal and the period during which the hearing and decision on appeal were pending.

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

2. An order of the Commissioner assessing tuition is enforceable through recording, upon request of the district board pursuant to N.J.A.C. 6A:3-12, on the judgment docket of the Superior Court, Law Division, in accordance with N.J.S.A. 2A:58-10.

### **6A:22-6.3 Calculation of tuition**

(a) Tuition assessed pursuant to the provisions of this section shall be calculated on a per student basis for the period of a student's ineligible enrollment, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23-3.1. The individual student's record of daily attendance shall not impact on such calculation.

(b) Nothing in this chapter shall preclude an equitable determination, by the district board of education or the Commissioner, that, when the particular circumstances of a matter so warrant, tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the school district.