

**STATE BOARD OF EDUCATION
ADMINISTRATIVE CODE
COMMENT/RESPONSE FORM**

This comment and response form contains comments from and since the November 2, 2016, meeting of the State Board of Education when the draft regulations were considered at Proposal Level.

Topic:	Student Residency	Meeting Date:	April 5, 2017
Code Citation:	N.J.A.C. 6A:22	Level:	Adoption
Division:	Finance	Completed by:	State Board Office

Summary of Comments and Agency Responses:

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

- A. Mark W. Biedron, President
State Board of Education
- 1. Jean Public
- 2. Michael Vrancik, Director of Governmental Affairs
New Jersey School Boards Association

1. COMMENT: The commenter asked for a recap about the proposed amendments and the authorizing statute. **(A)**

RESPONSE: P.L. 2016, c. 269 (N.J.S.A. 18A:38-3.1) was enacted to permit certain children of military members to remain in their school district of residence when their parent or guardian is ordered into active duty. Since N.J.A.C. 6A:22 currently covers the new law's provisions, the Department proposes only to add a reference to the new law wherever applicable existing law is referenced.

2. COMMENT: The commenter stated children who immigrate illegally to the United States should not be allowed to attend New Jersey public schools, especially free of charge. **(1)**

RESPONSE: N.J.S.A. 18A:38-1.a requires public schools to be free to any person between the ages of five and 20 who is domiciled within the school district. N.J.S.A. 18A:38-1.3.c specifically prohibits a school district from conditioning a student's enrollment on immigration status.

3. COMMENT: The commenter stated each school district should be entitled to confirm the residency status of each student using any appropriate and legal method while maintaining respect for each resident's right to privacy. **(2)**

RESPONSE: Nothing in N.J.A.C. 6A:22 prohibits a school district from using appropriate and legal means to confirm the residency status of each student. The Department thanks the commenter for the support.

4. **COMMENT:** The commenter stated a neighboring school district should be allowed to admit a nonresident student only with the approval of the executive county superintendent of the county in which the student resides if the school district of residence objects to the student's enrollment in the neighboring school district. (2)

RESPONSE: N.J.S.A. 18A:38-25 requires that students between the ages of six and 16 to either attend the public schools of the school district or receive equivalent instruction elsewhere. School districts are not authorized to prohibit resident students from choosing an alternative setting for educational instruction, including nonpublic schools, other public schools, or homeschool. According to N.J.S.A. 18A:38-3, "any person not resident in a school district, if eligible except for residence, may be admitted to the schools of the district with the consent of the board of education upon such terms, and with or without payment of tuition, as the board may prescribe."

5. **COMMENT:** The commenter stated NJSBA believes in an expedited hearing process to determine an affidavit student's entitlement to a free education where entitlement is a matter of dispute. (2)

RESPONSE: As N.J.S.A. 18A:38-1.b(1) entitles affidavit students to an expedited hearing, the Department thanks the commenter for the support.

6. **COMMENT:** The commenter stated the state should reimburse the school district for the cost of tuition and assume the rights of the school district against the parents/guardians of an affidavit student for tuition reimbursement if the Commissioner fails to render a decision in a timely fashion. (2)

RESPONSE: The Department disagrees the State should reimburse a school district for the costs incurred during the time it takes the Commissioner to determine whether a student is legally entitled to a free education within the school district. The State cannot assume the rights of the school district. N.J.S.A. 18A:38-1 requires school districts to enroll certain students for free, and prohibits school districts from denying admission "during the pendency of the proceedings before the commissioner." N.J.S.A. 18A:38-1.b(1) also requires the Commissioner to "assess the resident tuition for the student" when the evidence does not support the claim that a resident is entitled to a free public education within the school district. Thus, the Legislature already determined school districts must first provide a free public education to a student in cases of residency dispute and, afterward, secure tuition for the billable period of ineligible attendance.

As the Commissioner is the adjudicator in residency dispute decisions, pursuant to N.J.S.A. 18A:38-1.b(1) and 18A:6-9, he or she may not "assume the rights of" either party in a dispute. Additionally the State is authorized to assume the cost of educating a student only in specific circumstances set forth in statute (e.g., N.J.S.A. 18A:7B-12.d and 12.1). The rules governing the timelines and procedure for school law decisions before the Commissioner are governed by N.J.A.C. 6A:3, Controversies and Disputes, N.J.A.C. 1:1, Uniform Administrative Procedure Rules, and the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and are outside the scope of this rulemaking.

7. **COMMENT:** The commenter said school districts can face significant and disproportionate budgetary impacts caused by the educational costs of students placed by the State in facilities for which school districts are legally responsible. The commenter also stated the State should assume the full costs of educating students placed by the State in State facilities, institutions, or residential settings. The commenter further stated the State should pay for all unreimbursed education and transportation costs for students placed by the State in facilities. (2)

RESPONSE: N.J.S.A. 18A:7B-2 requires tuition to be deducted from the State aid of the school district of residence for each student residing in a State facility on the last school day prior to October 16.

8. **COMMENT:** The commenter said school districts should not be required to make tuition payments for days in which a resident student does not actually reside in a State facility, or should not be overcharged in any manner for students. (2)

RESPONSE: N.J.S.A. 18A:7B-2 prescribes the last school day prior to October 16 as the date on which the enrollment count is taken for purposes of State aid funding and tuition payments. The statute does not authorize the Department to prorate the tuition payment according to the number of days a student resides in a State facility.

9. **COMMENT:** The commenter stated district boards of education should be informed by a State facility of a student's placement and billed for tuition charges incurred in the current school year by the last day of the current budget year. (2)

RESPONSE: N.J.A.C. 6A:17-3.2(a)1 requires the State agency that places a general education student in a State facility to consult with, among other entities, the student's school district of residence to develop an individualized program plan within 30 calendar days of the student's placement in the State facility. Further, N.J.S.A. 18A:7B-2 requires the tuition payment to be deducted from the school district of residence's subsequent year State aid allocation.

10. **COMMENT:** The commenter stated the Departments of Education and Human Services should minimize the frequent displacements of homeless students during any school year for the good of the students' educational continuity. (2)

RESPONSE: Federal law requires educational stability decisions for homeless students to be determined on an individual basis. The issue is not addressed in N.J.A.C. 6A:22 and, therefore, is outside the scope of this rulemaking.



State of New Jersey

DEPARTMENT OF EDUCATION

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**Adoption Level
April 5, 2017**

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

KIMBERLEY HARRINGTON
Acting Commissioner

TO: Members, State Board of Education

FROM: Kimberley Harrington
Acting Commissioner

SUBJECT: N.J.A.C. 6A:22, Student Residency

AUTHORITY: N.J.S.A. 18A:38-1

REASON
FOR ACTION: Readoption with amendments

SUNSET DATE: December 22, 2016

Summary

The Department of Education (Department) proposes to readopt N.J.A.C. 6A:22, Student Residency, with amendments.

In accordance with the New Jersey State Constitution, Article VIII, Section IV, Paragraph 1, the Legislature established a system of free public schools for all children in the State. Through N.J.S.A. 18A:38-1, the Legislature provided for students to attend school in a particular school district based upon domicile, residency, or "affidavit student" status (living with and supported by a person other than the parent or guardian for reasons not related to attending school). From their inception, the implementing rules for N.J.S.A. 18A:38-1 have sought to maintain the balance intended by the statute, which is to deter attempts to attend school in a particular school district where there is no lawful entitlement to do so, while recognizing as paramount a student's right to free public education.

Chapter 22 was recodified from N.J.A.C. 6A:28-2, Entitlement to Attend School Based on Domicile or Residency in District, effective October 4, 2004. The chapter was readopted effective December 22, 2009. Pursuant to N.J.S.A. 52:14B-5.1, the current rules were scheduled to expire on December 22, 2016. As the Department submitted this notice of proposal to the Office of Administrative Law (OAL) prior to that date, the expiration date is extended 180 days to June 20, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

In January 2016, P.L. 2016, c. 269 was enacted to permit certain children of military members to remain in their school district of residence when their parent or guardian is ordered into active duty (N.J.S.A. 18A:38-3.1). Since the chapter currently covers the new law's

provisions, the Department proposes only to add a reference to the new law wherever applicable existing law is referenced.

The following provides an overview of the rules proposed for re adoption:

Subchapter 1. Purpose, Scope, and Definitions

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

This section cites the statutes that authorize the chapter's rules. The section also states the chapter does not address, other than by reference to applicable statutes and rules, attendance at school by nonresidents, children of certain military parents, children residing on Federal property, or persons who qualify for attendance as homeless students. The section also states the rules apply to all students between five and 20 years of age and to younger or older students otherwise entitled by law to free public education. The section also states the chapter's provisions are to be liberally construed to effectuate a student's constitutional and statutory right to a free public education.

The Department proposes an amendment to add "and 18A:38-3.1" at the end of "children of certain military parents (N.J.S.A. 18A:38-3.b)."

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

This section provides definitions for terms used within the chapter.

Subchapter 2. District Board of Education Policies

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

This section requires each district board of education to adopt written policies and procedures incorporating the chapter's requirements and to make copies available to parents and the public.

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

This section states nothing in the chapter is to be construed to limit a district board of education's discretion to admit nonresident students with or without payment of tuition, pursuant to N.J.S.A. 18A:38-3.a.

Subchapter 3. Eligibility to Attend School

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

This section authorizes a student to attend a school district if he or she is domiciled within the school district, and further defines what it means to be domiciled. The section addresses the many living situations that students may present upon applying for enrollment in a school district.

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

This section establishes specific criteria for school attendance for students who are not domiciled within the school district. The list includes "affidavit students" and students with

temporary residency status. The section incorporates the statutory provisions for school attendance of children whose parents or guardians belong to the National Guard or United States armed forces reserves, children placed by court order in the home of a school district resident, and children residing on Federal property. The section also includes the process for a student to remain enrolled in a school district for the remainder of the year after he or she moves due to a family crisis and requires the school district to provide transportation for the student at a cost to be reimbursed by the State.

The Department proposes an amendment at N.J.A.C. 6A:22-3.2(f), which permits students to remain in a school district if they move out of the school district because a parent or guardian is a member of the New Jersey National Guard or United States reserve and has been ordered to active service in a time of war or national emergency, to include two references to the new statute, N.J.S.A. 18A:38-3.1, that allows such attendance.

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

This section prohibits a student's eligibility to attend school from being affected by the physical condition of housing, or by the student or parents' immigration status. The section also prohibits school districts from inquiring about a student's immigration status, except for students who have obtained or are seeking a Certificate of Eligibility for Nonimmigrant Student Status (U.S. Customs and Immigration Services (USCIS) form I-20) from the school district to apply for an F-1 visa.

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

This section requires school districts to accept certain documents as proof of eligibility for a student to enroll in the school district. Acceptable documents include those that demonstrate residency or entitlement to enroll in the school district without residency. The section prohibits school districts from requiring information or documents otherwise protected from disclosure, such as income tax returns, Social Security numbers, compliance with housing ordinances or tenancy conditions, or immigration/visa status (except in the case of F-1 student visas). The protected information or documents may be disclosed voluntarily by an applicant.

Subchapter 4. Initial Assessment and Enrollment

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

This section requires each district board of education to use Commissioner-provided registration forms or locally developed forms that meet specified criteria. The section also requires school districts to make available sufficient numbers of registration forms and trained registration staff to ensure prompt determination and enrollment. The section further requires school districts to make initial eligibility determinations upon presentation of an enrollment application and enroll a student immediately, except in cases of clear, uncontested denials. The section further requires a school district to enroll a student immediately, if the information provided is incomplete, unclear, or questionable and to notify the applicant the student will be removed from school if the defects in the application are not corrected or an appeal is not filed. For students who appear to be ineligible based on the information provided in the initial application, the school district shall issue a preliminary written notice of ineligibility that includes information about the right to appeal. If enrollment is denied and no intent to appeal is indicated, the section requires applicants to be advised they must comply with compulsory education laws. The section also requires a school district to provide the student's name and address to the resident school district or the New Jersey Department of Children and Families, if

a student is denied enrollment and the parent or guardian has not appealed or provided a written statement indicating the student will be receiving instruction in another school or environment.

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

This section requires a school district that sends a notice of ineligibility to enroll a student to include in the notification specific items to ensure the parent or guardian is aware of the reason for denial of eligibility and his or her rights and responsibilities under the law.

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

This section states nothing in the subchapter precludes a district board of education from identifying through further investigation or periodic requests for revalidation of eligibility, students enrolled in the school district who may be ineligible for continued attendance. The section also allows a chief school administrator to apply to the district board of education to remove students who are later determined to be ineligible for continued attendance. The section further requires a school district to issue a preliminary notice of ineligibility and to provide for a hearing before the district board of education prior to a student's removal.

Subchapter 5. Appeal of Ineligibility Determination

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

This section authorizes an applicant to appeal, to the Commissioner, a school district determination that a student is ineligible to attend its schools. The section also requires an appeal in the case of an affidavit student to be filed by the resident keeping the student.

Subchapter 6. Assessment and Calculation of Tuition

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

In cases of an ineligibility determination when no appeal to the Commissioner is filed, the section authorizes the district board of education to assess tuition for up to one year of a student's ineligible attendance, including the 21 day period provided for the appeal. The section also allows the district board of education to petition the Commissioner for an order assessing tuition of the party responsible for the student tuition assessment.

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

This section allows the Commissioner to assess tuition for the period during which a hearing and decision on appeal were pending and for up to one year of a student's ineligible attendance, including the 21-day period for the appeal when an appeal is filed and either withdrawn or the student is found to be ineligible,.

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

This section requires the tuition amount to be assessed to be calculated on a per-student basis for the period of the student's ineligible enrollment, up to one year. The section also states that nothing in the chapter precludes the district board of education or Commissioner from forgiving all or part of an assessment when the particular circumstances warrant it, such as a case of school district error.

As the Department has provided a 60-day comment period in this notice of proposal, this notice is exempted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption with amendments govern the process for enrolling students in school, and provide school districts and parents with the process for appeals and the assessment of tuition for students found ineligible for enrollment. The rules proposed for readoption with amendments also ensure continuity in a student's educational placement after a family crisis displaces him or her from the original school district. The rules proposed for readoption with amendments provide school districts and parents with a clear description of what is required to enroll a student in a school district. The rules proposed for readoption with amendments also ensure prompt admittance to school so students are not denied access to public education while awaiting resolution of an eligibility status.

Economic Impact

The rules proposed for readoption with amendments require school districts to provide for a free public education for all students domiciled within the school district boundaries. Since school districts are primarily supported through local property taxes, the cost for educating resident students is generally borne by the local taxpayers and through the provision of State aid, which is determined using resident enrollment counts. A minor contribution to the economic impact is free attendance for nonresident students, which the rules authorize in limited circumstances to ensure continuity of education for students who would otherwise be required to change school districts. In total, the rules proposed for readoption with amendments provide an orderly process for determining student eligibility for free attendance and limits a school district's exposure to unwarranted costs.

Federal Standards Statement

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

Jobs Impact

The rules proposed for readoption with amendments will result in neither the generation nor loss of jobs.

Agriculture Industry Impact

The rules proposed for readoption with amendments will have no impact on the agriculture industry in New Jersey.

Regulatory Flexibility Statement

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

Housing Affordability Impact Analysis

The rules proposed for re adoption with amendments will have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood the rules proposed for re adoption with amendments would evoke a change in the average costs associated with housing or the number of housing units in the State. The rules proposed for re adoption with amendments relate to standards and procedures for student enrollment.

Smart Growth Development Impact Analysis

The rules for re adoption with amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood the rules proposed for re adoption with amendments would evoke a change in housing production in Planning Area 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey. The rules proposed for re adoption with amendments relate to standards and procedures for student enrollment.

Full text of the rules proposed for re adoption and the proposed amendments follows (additions indicated in bold **thus**; deletions indicated in brackets [thus]):

N.J.A.C. 6A:22, STUDENT RESIDENCY

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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 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 **and 18A:38-3.1**); children residing on Federal property (N.J.S.A. 18A:38-7.7 et seq.); or persons qualifying under N.J.S.A. 18A:38-1.f, which provides for attendance by homeless students and is implemented through N.J.A.C. 6A:17-2, Education of Homeless Children.
- (b) The provisions of this chapter shall apply to students between five and 20 years of age, pursuant to N.J.S.A. 18A:38-1, and to younger or older students otherwise entitled by law to free public education.
- (c) The provisions of this chapter shall be liberally construed so as to effectuate a student's constitutional and statutory right to a free public education.

6A:22-1.2 Definitions

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

“Affidavit student” means a student attending, or seeking to attend, school in a school district pursuant to N.J.S.A. 18A:38-1.b and N.J.A.C. 6A:22-3.2(a).

“Appeal” means contested case proceedings before the Commissioner pursuant to N.J.A.C. 6A:3, Controversies and Disputes.

“Applicant” means a parent, guardian, or a resident supporting an affidavit student who seeks to enroll a student in a school district; or an unaccompanied homeless youth or adult student who seeks to enroll in a school district.

“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 unless it can be proven that the child does not actually live with the 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 chapter’s requirements, and shall make copies available to parents and the public.
- (b) In all such policies and procedures, a district board of education shall construe liberally the chapter’s provisions to effectuate students’ constitutional and statutory right to a free public education.

6A:22-2.2 Discretionary admission of nonresident students

Nothing in this chapter shall be construed to limit a district board of education's discretion to admit nonresident students, or the ability of a nonresident student to attend school with or without payment of tuition with the accepting district board of education's consent, 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 is eligible to attend a school district if he or she is domiciled within the school district.
 - 1. 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.
 - i. When a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of 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. This subparagraph shall apply regardless of which parent has legal custody.
 - ii. When a student's physical custody is shared on an equal-time, alternating week/month or other similar basis so the student is not living with one parent or guardian for a majority of the school year and there is no court order or written agreement between the parents designating the school district of 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 the October 16 preceding the application date.

- (1) When 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 that 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. When 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 of domicile of the parent or guardian with whom the student actually lives as of the last school day prior to October 16.
 - (2) When the domicile of a student with disabilities as defined in N.J.A.C. 6A:14, Special Education, cannot be determined pursuant to this section, nothing in this section shall preclude an equitable determination of shared responsibility for the cost of the student's out-of-district placement.
- 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.
 - 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.

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 domicile within the school district.
 3. A student is domiciled in the school district when he or she has come from outside the State and is living with a person domiciled in the school 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:34-54 (“home state” definition) and 65.a(1). However, a 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 school 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 school district.
- (b) When 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 school district of domicile for school attendance purposes shall be the municipality to which the majority of the dwelling’s or unit’s property tax is paid.
1. When property tax is paid in equal amounts to two or more municipalities and there is no established assignment for students residing in the affected dwellings, the school district of domicile for school attendance purposes shall be determined through assessment of individual proofs of eligibility 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 the school district prior to December 17, 2001.
- (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. 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 is eligible to attend the school district pursuant to N.J.S.A. 18A:38-1.b if he or she is kept in the home of a person other than the student's parent or guardian, and 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 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 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 time longer than the school term, and will assume all

personal obligations for the student pertaining to school requirements; and

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

2. A student shall not be deemed ineligible under this subsection because required sworn statement(s) cannot be obtained when evidence is presented that the underlying requirements of the law are being met, notwithstanding the inability of the resident or student to obtain the sworn statement(s).
 3. A student shall not be deemed ineligible under this subsection when evidence is presented that the student has no home or possibility of school attendance other than with a school 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 occasional gifts or makes limited contributions, financial or otherwise, toward the student's welfare provided the resident keeping the student receives from the parent or guardian no payment or other remuneration 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 the child and any person who fraudulently claims to have given up custody of his or her child to a person in another school district commits a disorderly persons offense.
- (b) A student is eligible to attend 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 school district who is not the parent or guardian and 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 school year during which the parent or guardian returns from active military duty.
- (c) A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-1.d if the student's parent or guardian temporarily resides within the school district and elects to have the student attend the school district of temporary residence, notwithstanding the existence of a domicile elsewhere.
1. When required by the district board of education, the parent or guardian shall demonstrate the temporary residence is not solely for purposes of the student attending the school district of temporary residence;
 2. When 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 N.J.A.C. 6A:22-3.1(a)1i. However, no student shall be eligible to attend school based upon a parent or guardian's temporary residence in a school district unless the parent or guardian demonstrates, if required by the district board of education, the temporary residence is not solely for purposes of a student's attending the school district.
- (d) A student is eligible to attend the school district pursuant to N.J.S.A. 18A:38-1.f if the student's parent or guardian moves to another school 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 is eligible to attend the school district if the student is placed by court order or by a society, agency, or institution in the home of a school district resident pursuant to N.J.S.A. 18A:38-2. As used in this subsection, "court order" shall not encompass orders

of residential custody under which claims of entitlement to attend a school 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 is eligible to attend the school district pursuant to N.J.S.A. 18A:38-3.b **and 18A:38-3.1** if the student previously resided in the school 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 school district. A school district admitting a student pursuant to N.J.S.A. 18A:38-3.b **and 18A:38-3.1** shall not be obligated for transportation costs.
- (g) A student is eligible to attend 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.
- (h) In accordance with N.J.S.A. 18A:38-1.1, a student who is not considered homeless under N.J.S.A. 18A:7B-12 and who moves to a new school district during the academic year as a result of a family crisis shall be permitted to remain enrolled in the original school district of residence for the remainder of the school year without the payment of tuition. A student attending an academic program during the summer, who is otherwise eligible except for the timing of the move, shall be permitted to remain in the school district for the remainder of the summer program if it is considered an extension of the preceding academic year.
 - 1. For purposes of this subsection, “family crisis” shall include, but not be limited to:
 - i. An instance of abuse such as domestic violence or sexual abuse;
 - ii. A disruption to the family unit caused by death of a parent or guardian; or
 - iii. An unplanned displacement from the original residence such as fire, flood, hurricane, or other circumstances that render the residence uninhabitable.

2. Upon notification of the move by the parent or guardian, the original school district of residence shall allow the student to continue attendance and shall provide transportation services to and from the student's new domicile in accordance with N.J.S.A. 18A:39-1. The original school district of residence may request from the parent or guardian and may review supporting documentation about the reason(s) for the move; however, any such review shall not interrupt the student's continued enrollment in the school district and in the current school of attendance with the provision of transportation.
 - i. Examples of documentation include, but are not limited to, newspaper articles, insurance claims, police or fire reports, notes from health professionals, custody agreements, or any other legal document.
3. If the parent or guardian or the relevant documentation indicates the child is homeless pursuant to N.J.S.A. 18A:7B-12, the school district liaison shall assume the coordination of enrollment procedures pursuant to N.J.A.C. 6A:17-2.5 and the student shall not be eligible for enrollment under N.J.S.A. 18A:38-1.1.
4. If the original school district of residence determines the situation does not meet the family crisis criteria at (h)1i through iii above, the superintendent or designee shall notify the parent or guardian in writing. The notification shall inform the parent or guardian of his or her right to appeal the decision within 21 calendar days of his or her receipt of the notification, and shall state that if such appeal is denied, he or she may be assessed the costs for transportation provided to the new residence during the period of ineligible attendance. It shall also state whether the parent or guardian is required to withdraw the student by the end of the 21-day appeal period in the absence of an appeal.

- i. The parent or guardian may appeal by submitting the request in writing with supporting documentation to the executive county superintendent of the county in which the original school district of residence is situated.
 - ii. Within 30 calendar days of receiving the request and documentation, the executive county superintendent shall issue a determination whether the situation meets the family crisis criteria at (h)1i through iii above. The original school district of residence shall continue to enroll the student and provide transportation to the current school of attendance in accordance with N.J.S.A. 18A:39-1 until the determination is issued.
 - iii. If the executive county superintendent determines the situation does not constitute a family crisis, the school district may submit to the executive county superintendent for approval the cost of transportation to the ineligible student's new domicile. The executive county superintendent shall certify the transportation costs to be assessed to the parent or guardian for the period of ineligible attendance.
5. When the original school district of residence determines the situation constitutes a family crisis pursuant to N.J.S.A. 18A:38-1.1, the superintendent or designee shall immediately notify the parent or guardian in writing.
 - i. When the original school district of residence anticipates the need to apply for reimbursement of transportation costs, it shall send to the executive county superintendent a request and documentation of the family crisis for confirmation the situation meets the criteria set forth at (h)1i through iii above.
 - ii. Within 30 days of receiving the school district's request and documentation, the executive county superintendent shall issue a determination of whether the situation meets the criteria for a family crisis.

The original school district of residence shall continue to enroll the student and provide transportation to the current school of attendance in accordance with N.J.S.A. 18A:39-1 until the determination is issued, and shall not be reimbursed for additional transportation costs unless the executive county superintendent determines the situation is a family crisis or as directed by the Commissioner upon appeal.

6. In providing transportation to students under N.J.S.A. 18A:38-1.1, district boards of education shall use the most efficient and cost-effective means available and in conformance with all laws governing student transportation.
7. At the conclusion of the fiscal year in which the executive county superintendent has determined the situation constitutes a family crisis, the original school district of residence may apply to the executive county superintendent for a reimbursement of eligible costs for transportation services.
 - i. Eligible costs shall include transportation for students who are required to be transported pursuant to N.J.S.A. 18A:39-1.
 - ii. School districts shall provide documentation of the transportation costs for the eligible student(s) to the executive county superintendent, who shall review and forward the information to the Department's Office of School Facilities and Finance for reimbursement payment(s) to the school district.
 - iii. Payment to the school district shall be made in the subsequent fiscal year and shall equal the approved cost less the amount of transportation aid received for the student(s).
8. Nothing in this subsection shall prevent a district board of education from allowing a student to enroll without the payment of tuition pursuant to N.J.S.A. 18A:38-3.a.

9. Nothing in this subsection shall prevent a parent or school district from appealing the executive county superintendent's decision(s) to the Commissioner in accordance with N.J.A.C. 6A:3-1.3. If the Commissioner determines the situation is not a family crisis, his or her decision shall state which of the following shall pay the transportation costs incurred during the appeal process: the State, school district, or parent.

6A:22-3.3 Housing and immigration status

- (a) 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.
- (b) Except as set forth in (b)1 below, immigration/visa status shall not affect eligibility to attend school. Any student who is domiciled in the school district or otherwise eligible to attend school there pursuant to N.J.A.C. 6A:22-3.2 shall be enrolled without regard to, or inquiry concerning, immigration status.
 1. The provisions of N.J.S.A. 18A:38-1 and this chapter shall not apply to students who have obtained, or are seeking to obtain, a Certificate of Eligibility for Nonimmigrant Student Status (INS form I-20) from the school district 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. School 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 school 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 to support the student;
 5. 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;
 6. Affidavits, certifications, and sworn attestations pertaining to statutory criteria for school attendance from the parent, guardian, person keeping an "affidavit student," adult student, person(s) with whom a family is living, or others, as appropriate;
 7. Documents pertaining to military status and assignment; and
 8. Any other business record or document issued by a governmental entity.

- (b) A district board of education may accept forms of documentation not listed in (a) above, and shall not exclude from consideration any documentation or information presented by an applicant.
- (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 or subset of documents without regard to other evidence presented.
- (d) A district board of education shall not condition enrollment on the receipt of information or documents protected from disclosure by law, or pertaining to criteria that are not a legitimate basis for determining eligibility to attend school. They 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) The district board of education may consider, in a manner consistent with Federal law, documents or information referenced in (d) above, or pertinent parts thereof if voluntarily disclosed by the applicant. 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 Commissioner-provided registration forms (available at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc>), or locally developed forms that:
1. Are consistent with the Commissioner-provided forms;
 2. Do not seek information prohibited by this subchapter or any other provision of statute or rule;
 3. Summarize, for the applicant's reference, the criteria for attendance set forth in N.J.S.A. 18A:38-1, and specify the nature and form of sworn statement(s) to be filed;
 4. Clearly state the purpose for which the requested information is being sought in relation to the criteria; and
 5. Notify applicants that an initial eligibility determination is subject to more thorough review and evaluation, and that an assessment of tuition is possible if an initially admitted student is later found ineligible.
- (b) Each district board of education shall make available sufficient numbers of registration forms and trained registration staff to ensure prompt eligibility determinations and enrollment. Enrollment applications may be taken by appointment, but appointments shall be promptly scheduled and shall 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 application form for all types of enrollment, affidavit student forms shall comply in all respects with the provisions of (a) above. When affidavit student forms are used, the school district shall provide them to any person attempting to register a student of whom he or she is not the parent or guardian even if not 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 the student may qualify as an affidavit student.
 - 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.
 2. A district-level administrator designated by the chief school administrator shall be clearly identified to applicants and available to assist persons who experience difficulties with the enrollment process.
- (c) Initial eligibility determinations shall be made upon presentation of an enrollment application, and enrollment shall take place immediately except in cases of clear, uncontested denials.
 1. Enrollment shall take place immediately when an applicant has provided incomplete, unclear, or questionable information, but the applicant shall be notified that the student will be removed from the school district 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. When a student appears ineligible based on information provided in the initial application, the school district shall issue a preliminary written notice of ineligibility, including an explanation of the right to appeal to the Commissioner. Enrollment shall take place immediately if the applicant clearly indicates disagreement with the school 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 a 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) When enrollment is denied and no intent to appeal is indicated, applicants shall be advised they shall comply with compulsory education laws. When the student is between the ages of six and 16, applicants also shall be asked to complete a written statement indicating the student will be attending school in another school district or nonpublic school, or receiving instruction elsewhere than at a school pursuant to N.J.S.A. 18A:38-25. In the absence of the applicant's written statement that the student will be attending school in another school district or nonpublic school, or receiving instruction elsewhere than at a school, designated staff shall report to the school district of actual domicile or residence, or the Department of Children and Families, a potential instance of "neglect" for purposes of ensuring compliance with compulsory education laws, N.J.S.A. 9:6-1. Staff shall provide the school district or Department with the student's name, the name(s) of the parent/guardian/resident, and the student's address to the extent known. Staff also shall indicate admission to the school district has been denied based on residency or domicile, and there is no evidence of intent to arrange for the child to attend school or receive instruction elsewhere.
- (e) Enrollment or attendance at school shall not be conditioned on advance payment of tuition in whole or part when enrollment is denied and an intent to appeal is indicated, or when enrollment is provisional and subject to further review or information.
- (f) Each district board of education shall ensure the registration process identifies information suggesting an applicant may be homeless so procedures may be implemented 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 the absence of a certified copy of the student's birth certificate or other proof of his or her identity as 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 the absence of student medical information. However, actual attendance at school may be deferred until the student complies with student immunization rules at N.J.A.C. 8:57-4.
- (i) When enrollment in the school district, attendance at school, or the receipt of educational services in the regular education program appears inappropriate, the student shall not be denied based upon the absence of a student's prior educational record. However, the applicant shall be advised the student's initial educational placement may be subject to revision upon the school district's receipt of records or further assessment of the student.

6A:22-4.2 Notices of ineligibility

- (a) When a student is found ineligible to attend the school district pursuant to this chapter or the student's initial application is found to be deficient upon subsequent review or investigation, the school district immediately shall provide to the applicant notice that is consistent with Commissioner-provided sample form(s) (available at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc>) and meets 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.
 - i. The description shall be sufficient to allow the applicant to understand the basis for the decision and determine whether to appeal;

- ii. The description shall identify the specific subsection 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 still must be provided before a final eligibility status can be attained 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 notice date, along with an informational document provided by the Commissioner (available at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc>) describing how to file an appeal;
4. A clear statement of the student's right to attend school for the 21-day period during which an appeal can be made to the Commissioner. It also shall state the student will not be permitted to attend school beyond the 21st day following the notice date if missing information is not provided or an appeal is not filed;
5. A clear statement of the student's right to continue attending school while an appeal to the Commissioner is pending;
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 right to attend the school district, or the applicant withdraws the appeal, fails to prosecute, or abandons the appeal by any means other than settlement, the applicant may be assessed, by an 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 tuition rate, pursuant to N.J.A.C. 6A:22-6.3, that an applicant may be assessed for the year at issue if the applicant does not prevail on appeal or elects not to appeal;
 - i. If removal is based on the student's move from the school district, the notice of ineligibility shall also provide information as to whether school district policy permits continued attendance, with or without tuition, for students who move from the school district during the school year;
8. The name of a contact person in the school district who can assist in explaining the notice's contents; and
9. When no appeal is filed, notice that the parent or guardian shall still comply with compulsory education laws. In the absence of a written statement from the parent or guardian that the student will be attending school in another school district or nonpublic school, or receiving instruction elsewhere than at a school, 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. For purposes of facilitating enforcement of State compulsory education laws (N.J.S.A. 18A:38-25), staff shall provide the student's name, the name(s) of the parent/guardian/resident, address to the extent known, denial of admission based on residency or domicile, and absence of evidence of intent to attend school or receive instruction elsewhere.

6A:22-4.3 Removal of currently enrolled students

- (a) Nothing in this subchapter shall preclude a district board of education from identifying through further investigation or periodic requests for revalidation of eligibility, 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 who is enrolled and attending school based on an initial eligibility determination is later determined to be ineligible for continued attendance, the chief school administrator may apply to the district board of education for the student's removal.
 - 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, the 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," has been informed of his or her entitlement to a hearing before the district board of education.
- (d) Once the hearing is held, or if the parent, guardian, adult student, or resident keeping an "affidavit student," does not respond within the designated time frame to the chief school administrator's notice or appear for the hearing, the district board of education shall make a prompt determination of the student's eligibility and shall immediately provide notice in accordance with N.J.A.C. 6A:22-4.2.
- (e) If district board of education policy allows, a board committee shall conduct hearings required pursuant to this subchapter and then shall make a recommendation to the full board. However, no student shall 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) An applicant may appeal to the Commissioner a school district determination that a student is ineligible to attend its schools. Appeals shall be initiated by petition, which shall be filed in accordance with N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1 and shall proceed as a contested case pursuant to N.J.A.C. 6A:3.
 - 1. Pursuant to N.J.S.A. 18A:38-1.b(1), appeals of “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 an ineligibility determination, the district board of education may assess tuition for up to one year 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 of education 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 school district resident keeping an “affidavit” student and 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, the Commissioner may assess tuition for the period during which the hearing and decision on appeal were pending, and for up to one year of a student’s ineligible attendance in a school district prior to the appeal’s filing and including the 21-day period to file an appeal.

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 up to one year of ineligible attendance pursuant to N.J.A.C. 6A:22-6.1(a) plus the period of ineligible attendance after the appeal was filed. If the record of the appeal includes a calculation reflecting the tuition rate(s) for the year(s) at issue, the per diem tuition rate 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. In doing so, the Commissioner shall consider whether the ineligible attendance was due to a school district’s error. If the record does not include such a calculation and the district board of education has filed a counterclaim for tuition, the counterclaim shall proceed to a 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 of education 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 this section shall be calculated on a per-student basis for the period of a student's ineligible enrollment, up to one year, by applicable grade/program category and consistent with the provisions of N.J.A.C. 6A:23A-17.1. The individual student's record of daily attendance shall not affect the calculation.
- (b) Nothing in this chapter shall preclude an equitable determination by the district board of education or the Commissioner that tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the school district when the particular circumstances of a matter so warrant. In making the determination, the district board of education or Commissioner shall consider whether the ineligible attendance was due to a school district's error.