

EDUCATION

STATE BOARD OF EDUCATION

Student Residency

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

Proposed: December 19, 2016, at 48 N.J.R. 2663(a).

Adopted: April 5, 2017, by the State Board of Education, Kimberley Harrington, Acting Commissioner, Department of Education and Acting Secretary, State Board of Education.

Filed: April 6, 2017, as R.2017 d.087, **without change**.

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

Effective Dates: April 6, 2017, Readoption;
 May 1, 2017, Amendments.

Expiration Date: April 6, 2024.

Summary of Public Comments and Agency Responses:

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

1. Jean Public
2. Michael Vrancik, Director of Governmental Affairs
 New Jersey School Boards Association

1. 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.

2. 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.

3. 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.”

4. 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.

5. 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 (for example, 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, and 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.

6. 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.

7. 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.

8. 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.

9. 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.

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

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

Full text of the adopted amendments follows:

TEXT