

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

The following is the accessible version of the notice of proposal for the readoption with amendments at N.J.A.C. 6A:22.

Education

State Board Of Education

Student Residency

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

Authorized By: New Jersey State Board of Education, Christopher Huber, Acting Commissioner,
Department of Education and Acting Secretary, New Jersey State Board of Education.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2024-027.

Submit written comments by May 17, 2024, to:

Secil Onat, Assistant Commissioner

Division of Finance and Business Services

New Jersey Department of Education

PO Box 500

Trenton, New Jersey 08625-0500

Email: chapter22@doe.nj.gov

The agency proposal follows:

Summary

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

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 twice effective December 22, 2009, and April 6, 2017. Chapter 22 was scheduled to expire on April 6, 2024. As the Department submitted this notice of proposal to the Office Of Administrative Law prior to that date, the expiration date was extended 180 days to October 3, 2024, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The following is a summary of the chapter and the proposed amendments. Unless otherwise noted, the proposed amendments are to update New Jersey Administrative Code cross-references, for clarity or grammatical or stylistic improvement, or to remove gender-specific pronouns throughout the chapter.

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 statues 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 further states the chapter's provisions are to be liberally construed to effectuate a student's constitutional and statutory right to a free public education.

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.

The Department proposes new N.J.A.C. 6A:22-2.1(c) to state that the district board of education shall apply the policies for determining a student's residency consistently for all students, regardless of the school of attendance, including charter schools, renaissance school projects, and out-of-district placements. The proposed new subsection will clarify that school districts cannot apply different policies for students who do not attend schools operated by the school district.

N.J.A.C. 6A:22-2.2 Discretionary Admission of Nonresident Students

This section states that nothing in the chapter is to 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 and with the accepting district board of education's consent, pursuant to N.J.S.A. 18A:38-3.a.

The Department proposes to delete "or without" to align the regulation with P.L. 2023, c. 61, which requires school districts to charge tuition for nonresident students.

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 the student is domiciled within the school district. The section also defines what it means to be domiciled and 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 the student moves due to a family crisis.

The Department proposes amendments at N.J.A.C. 6A:22-3.2(d) to use the correct cross-reference to N.J.A.C. 6A:17-2, Education of Homeless Children “and Youths.” The Department proposes to amend N.J.A.C. 6A:22-3.2(h)4 and 5 to replace “superintendent” with “chief school administrator.” The Department proposes to delete N.J.A.C. 6A:22-3.2(h)8, which permits the school district to accept nonresident students without the payment of tuition. The proposed deletion will align the section with P.L. 2023, c. 61, which requires school districts to charge a uniform tuition rate for nonresident students. The Department proposes new N.J.A.C. 6A:22-3.2(i) to add to the list of exceptions that a district board of education may allow, by contract or district board of education policy, nonresident children of teaching staff members to enroll in the school district without the payment of tuition, pursuant to N.J.S.A. 18A:38-3.c. The proposed subsection will ensure this exception at P.L. 2023, c. 61 is included in the rules.

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 (INS 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. 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).

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 initial eligibility determinations upon presentation of an enrollment application and to 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. Proposed amendments at N.J.A.C. 6A:22-4.1(d) add the full name of the

Department of Children and Families. Proposed amendments at subsection (f) add the full heading of N.J.A.C. 6A:22-17, Education of Homeless Children “and Youths.”

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

This section requires a school district that sends a notice of enrollment ineligibility to include specific items to ensure the parent or guardian is aware of the reason for denial of eligibility and the parent or guardian’s rights and responsibilities pursuant to the State compulsory education law at N.J.S.A. 18A:38-25.

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.

The Department proposes to amend N.J.A.C. 6A:22-4.3(e) to add the full name of the “district” board “of education” and the full name of the Senator Byron M. Baer Open Public Meetings Act.

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.

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.

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 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 excepted 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 public 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 the student 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. The proposed amendments align the rules with P.L. 2023, c. 61, which requires school districts to charge tuition for nonresident students who are parentally placed in a school district they are not otherwise eligible to attend. The law does not affect students who attend nonresident school districts through contractual sending-receiving relationships, the Interdistrict School Choice program, contractual employee agreements (that is, for teachers), or State and Federal programs and laws that ensure the continuity of education, such as McKinney-Vento, family crisis, and National Guard membership. The law may increase revenue for school districts that currently accept parentally placed nonresident students without the payment of tuition and could increase costs for families who currently send their child(ren) to a nonresident school district for free. All students remain eligible to attend their resident school district free of charge. 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 only New Jersey public schools.

Housing Affordability Impact Analysis

The rules proposed for readoption with amendments will not have an impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the rules proposed for readoption with amendments will evoke a change in the average costs associated with housing because the rules proposed for readoption with amendments concern the standards and procedures for enrolling students in public schools.

Smart Growth Development Impact Analysis

There is an extreme unlikelihood the rules proposed for readoption with amendments would evoke a change in housing production in Planning Area 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan in New Jersey because the rules proposed for readoption with amendments concern the standards and procedures for enrolling students in public schools.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

There is an extreme unlikelihood the rules proposed for readoption with amendments would have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State because the rules proposed for readoption with amendments concern the standards and procedures for enrolling students in public schools.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6A:22.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

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] **pursuant to** 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 **and Youths**.

(b)-(c) (No change.)

Subchapter 2. District Board of Education Policies

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

(a)-(b) (No change.)

(c) The district board of education shall apply the policies for determining a student's residency consistently for all of its students, including students who attend charter schools, renaissance school projects, and out-of-district placements.

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] **the** payment of tuition [with] **and** 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] **the student** is domiciled within the school district.

1. A student is domiciled in the school district when [he or she] **the student** is the child of a parent or guardian whose domicile is located within the school district.

i. (No change.)

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) (No change.)

(2) When the domicile of a student with disabilities as defined [in] **at** 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.–iv. (No change.)

2. A student is domiciled in the school district when [he or she] **the student** 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] **the student** 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] **the student’s** 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. (No change.)

(b) (No change.)

(c) [When a student's parent or guardian elects to exercise such entitlement, nothing]

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.1 or the temporary residency (less than one year) provision [of] **at** 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] **the student** 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] **the person's** 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] **the parent or guardian** 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] **the person** 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] **the person's** 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] **pursuant to** 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] **pursuant to** 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] **pursuant to** 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] **the person's** 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] **their** 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] **pursuant to** this subsection shall cease at the end of the school year during which the parent or guardian returns from active military duty.

(c) (No change.)

(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 **and Youths**.

(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] **at** N.J.S.A. 18A:38-1 and the applicable standards set forth in this chapter.

(f)–(g) (No change.)

(h) In accordance with N.J.S.A. 18A:38-1.1, a student who is not considered homeless [under] **pursuant to** 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.-2. (No change.)

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] **pursuant to** 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] **ii, and** iii above, the [superintendent] **chief school administrator** or designee shall notify the parent or guardian in writing. The notification shall inform the parent or guardian of [his or her] **the parent's or guardian's** right to appeal the decision within 21 calendar days of [his or her] **the parent's or guardian's** receipt of the notification[, and]. **The notification** shall state that if such appeal is denied, [he or she] **the parent or guardian** may be assessed the costs for transportation provided to the new residence during the period of ineligible attendance. [It] **The notice** 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. (No change.)

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] **ii, and** 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. (No change.)

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] **chief school administrator** 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] **ii, and** iii above.

ii. (No change.)

6. In providing transportation to students [under] **pursuant to** 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. (No change.)

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. (No change.)

[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.] **8.** 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] **the Commissioner's** decision shall state which of the following shall pay the transportation costs incurred during the appeal process: the State, school district, or parent.

(i) A district board of education may allow, by contract or district board of education policy, nonresident children of teaching staff members to enroll in the school district without the payment of tuition, pursuant to N.J.S.A. 18A:38-3.c.

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] **the applicant's** compliance with local housing ordinances or terms of lease.

(b) Except as set forth [in] **at (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. (No change.)

6A:22-3.4 Proof of eligibility

(a) (No change.)

(b) A district board of education may accept forms of documentation not listed [in] **at (a)** above, and shall not exclude from consideration any documentation or information presented by an applicant.

(c) (No change.)

(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. (No change.)

2. Documentation or information relating to citizenship or immigration/visa status, except as set forth [in] **at** N.J.A.C. 6A:22-3.3(b);

3.-4.(No change.)

(e) The district board of education may consider, in a manner consistent with Federal law, documents or information referenced [in] **at** (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>]

<http://www.state.nj.us/education/code/current/title6a/chap22sample.docx>), or locally developed forms that:

1.-2. (No change.)

3. Summarize, for the applicant's reference, the criteria for attendance set forth [in] **at** N.J.S.A. 18A:38-1, and specify the nature and form of sworn statement(s) to be filed;

4.-5. (No change.)

(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] **at (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] **the person** is not the parent or guardian even if not specifically requested.

i.–ii. (No change.)

2. (No change.)

(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. (No change.)

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] **at 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 **the Department of Children and Families** 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) (No change.)

(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 **and Youths**.

(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] **the student's** identity as required within 30 days of initial enrollment, pursuant to N.J.S.A. 18A:36-25.1.

(h)–(i) (No change.)

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

1. (No change.)

(b) Notices of ineligibility shall include:

1. (No change.)

2. 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] **pursuant to** 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>] **<http://www.state.nj.us/education/code/current/title6a/chap22sample.docx>**) describing how to file an appeal;

4.-9. (No change.)

6A:22-4.3 Removal of currently enrolled students

(a) (No change.)

(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] **at** 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] **their** 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 **district board of education** committee shall conduct hearings required pursuant to this subchapter and then shall make a recommendation to the full **district board of education**. 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 **Senator Byron M. Baer** Open Public Meetings Act.

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] at N.J.S.A. 18A:38-1 for appeal to the Commissioner.

1. (No change.)

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] **the** 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. (No change.)