

# REGULATION GUIDE

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Eligibility of Resident/Nonresident Students  
Mar 16  
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## R 5111 ELIGIBILITY OF RESIDENT/NONRESIDENT STUDENTS

### A. Definitions

1. "Affidavit student" means a student attending, or seeking to attend, school in a district pursuant to N.J.S.A. 18A:38-1.(b) and N.J.A.C. **6A:22-3.2(a)** ~~6A:22-3.1(a)2.~~
2. "Appeal ~~to the Commissioner~~" or "appeal" means contested case proceedings before the Commissioner of Education pursuant to N.J.A.C. 6A:3, **Controversies and Disputes.**
3. **"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.**
43. "Commissioner" means the Commissioner of Education or his/her designee.
54. "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** ~~subject to a rebuttable presumption~~ **does not actually live** ~~is actually living~~ with the custodian. "Guardian" also means the Department of Children and Families for purposes of N.J.S.A. 18A:38-1.(e).
5. ~~"Parent" means the natural or adoptive parent, foster parent, and surrogate parent.~~

### B. Eligibility to Attend School – Students Domiciled in the District

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



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- a. A student is domiciled in the **school** district when he or she is living with a parent or guardian whose **permanent home domicile** is located within the **school** district. ~~A home is permanent when the parent or guardian intends to return to it when absent and has no present intent of moving from it, notwithstanding the existence of homes or residences elsewhere.~~
- (1) **When** ~~Where~~ a student's parents or guardians are domiciled within different **school** districts; and ~~where~~ there is no court order or written agreement between the parents designating the **school of attendance** ~~for school attendance~~, the student's domicile is the **school** district of the parent or guardian with whom the student lives for the majority of the school year. **This provision shall apply** regardless of which parent has legal custody.
- (2) **When** ~~Where~~ a student's physical custody is shared on an equal-time, alternating week/month or other similar basis **so** ~~such that~~ the student is not living with one parent or guardian for a majority of the school year; and ~~where~~ there is no court order or written agreement between the parents designating the **school** district **of** ~~for school~~ attendance, the student's domicile is the present domicile of the parent or guardian with whom the student resided on the last school day prior to October 16 preceding the **application** date ~~of the application~~.
- (a) **When** ~~Where~~ If a student resided with both parents or guardians, or with neither parent or guardian, on the last school day prior to the preceding October 16, the student's domicile is the domicile of the parent or guardian with whom the parents or guardians indicate the student will be residing on the last school day prior to the ensuing October 16. **When** ~~Where~~ the parents or guardians do not designate, or cannot agree upon, the student's likely residence as of that date, or if on that date the student is not residing



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with the parent or guardian previously indicated, the student **shall will** attend school in the **school** district **of domicile of where** the parent or guardian with whom the student **actually lives is actually living** as of the last school day prior to October 16 **is domiciled**.

(b) **When Where** the domicile of the student with disabilities as defined in N.J.A.C. 6A:14 cannot be determined pursuant to N.J.A.C. 6A:22-3.1, nothing shall preclude an equitable determination of shared responsibility for the cost of such student's out-of-district placement.

(3) **When Where** a student is living with a person other than a parent or guardian, nothing in N.J.A.C. 6A:22-3.1 is intended to limit the student's **right entitlement** to attend school in the parent or guardian's **school** district of domicile pursuant to the provisions of N.J.A.C. 6A:22.

(4) **No school The** district shall ~~not~~ be required to provide transportation for a student residing outside the **school** district for all or part of the school year; ~~other than that~~ **unless transportation is** based upon the home of the parent or guardian domiciled within the **school** district **or otherwise** ~~to the extent required by law, as a result of being the district of domicile for school attendance purposes pursuant to the provisions of N.J.A.C. 6A:22.~~

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



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- c. A student is domiciled in the **school** district when the student has come from outside the State and is living with a person domiciled in the **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:34-30(e)~~ **2A:34-54 ("home state" definition)** and **2A:34-65.a(1)** ~~N.J.S.A. 2A:34-31~~. However, **a** ~~any such~~ student may later be subject to removal proceedings if application for ~~legal~~ 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.
  - d. 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.
  - e. 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.
2. 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 ~~that of~~ the municipality to which the majority of the dwelling's property tax is paid, or to which the majority of the **dwelling's or** unit's property tax is paid ~~by the owner of a multi-unit dwelling~~.
    - a. **When** ~~Where~~ property tax is paid in equal amounts to two or more municipalities, and ~~where~~ there is no established assignment for students residing in the affected dwellings, the **school** district of domicile for school attendance purposes **shall** ~~will~~ be determined through assessment of individual proofs as provided pursuant to N.J.A.C. 6A:22-3.4.
    - b. This provision shall not preclude the attendance of currently enrolled students who were permitted to attend **the** ~~school in the~~ district prior to ~~the provision's initial promulgation on~~ December 17, 2001.



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3c. **When** ~~Where~~ a student's parent or guardian elects to exercise such entitlement, nothing in N.J.A.C. 6A:22-3.1 ~~is intended to foreclose a~~ **shall exclude a** student's **right** entitlement to attend **the** school in the district of domicile **although** ~~notwithstanding that~~ the student is qualified to attend **a different** school in a ~~different~~ district pursuant to N.J.S.A. 18A:38-1.(b) or the temporary residency (less than one year) provision of N.J.S.A. 18A:38-1.(d).

3. **Notwithstanding the provisions of N.J.S.A. 18A:38-1 or any other section of law to the contrary, a child who is domiciled within the school district and resides with a parent or guardian who is a member of the New Jersey National Guard or a member of the reserve component of the armed forces of the United States who is ordered into active military service in any of the armed forces of the United States in a time of war or national emergency, shall be permitted to remain enrolled in the school district in which the child is domiciled at the time of the parent or guardian being ordered into active military service, regardless of where the child resides during the period of active duty. The school district shall not be responsible for providing transportation for the child if the child lives outside of the district. Following the return of the child's parent or guardian from active military service, the child's eligibility to remain enrolled in the school district pursuant to N.J.S.A. 38-3.1 shall cease at the end of the current school year unless the child is domiciled in the school district.**

## C. Eligibility to Attend School – Other Students Eligible to Attend School

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

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



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- (1) The student's parent or guardian has filed, together with documentation to support its validity, a sworn statement that he or she is not capable of supporting or providing care for the student due to family or economic hardship and that the student is not residing with the other person solely for the purpose of receiving a free public education; and
  - (2) The person keeping the student has filed, if so required by the **Board of Education** district:
    - (a) A sworn statement that he or she is domiciled within the **school** district, is supporting the child without remuneration and intends to do so for a longer time than the school term, and will assume all personal obligations for the student **pertaining relative** to school requirements; and
    - (b) A copy of his or her lease if a tenant, ~~or~~ a sworn landlord's statement if residing as a tenant without a written lease, **or a mortgage or tax bill if an owner.**
- b. A student shall not be deemed ineligible under this provision because required sworn statement(s) cannot be obtained, ~~where~~ **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).
- c. A student shall not be deemed ineligible under this provision **when** ~~where~~ 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.



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- d. A student shall not be deemed ineligible under this **provision** ~~section~~ solely because a parent or guardian gives **occasional** gifts or makes limited contributions, financial or otherwise, toward the **student's** welfare ~~of the student~~, provided the resident keeping the student receives **from the parent or guardian** no payment or other remuneration ~~from the parent or guardian~~ for regular maintenance of the student.
- e. Pursuant to N.J.S.A. 18A:38-1.c(e), any person who fraudulently allows a child of another person to use his or her residence, **and** is not the primary financial supporter of that child, **and any person** who fraudulently claims to have given up custody of his or her child to a person in another **school** district commits a disorderly persons offense.
2. A student over five and under twenty years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to a free public education, is eligible to attend school in ~~the~~ **this school** district pursuant to N.J.S.A. 18A:38-1.b(b) if the student is kept in the home of a person domiciled in the **school** district, **who is not the parent or guardian** ~~other than~~ **and** the parent or guardian, ~~where the parent or guardian~~ is a member of the New Jersey National Guard or the reserve component of the United States armed forces and has been ordered into active military service in the United States armed forces in time of war or national emergency.
- a. Eligibility under this provision shall cease at the end of the ~~current~~ school year **during which** ~~upon~~ the parent or **guardian** ~~guardian's~~ returns from active military duty.
3. A student over five and under twenty years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to a free public education, is eligible to attend school **in this school district** ~~in the 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 ~~in the~~ district of temporary residence, notwithstanding the existence of a domicile elsewhere.



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- a. **When required by the Board of Education,** the parent or guardian, when required by the district, shall demonstrate ~~that such~~ **the** temporary residence is not solely for purposes of ~~the~~ **a** student's attending **the** school ~~within the~~ district of temporary residence;
  - b. **When** ~~Where~~ one of a student's parents or guardians temporarily resides in ~~the~~ **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 when~~ required by the **Board of Education,** ~~district, that such~~ **the** temporary residence is not solely for purposes of a student's attending **the** school ~~within the~~ district.
4. A student over five and under twenty years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to a free public education, is eligible to attend school in ~~the~~ **this 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.
  5. A student over five and under twenty years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to a free public education, is eligible to attend school in ~~the~~ **this school** district pursuant to N.J.S.A. 18A:38-2 if the student is placed ~~in the home of a district resident~~ by court order or by a society, agency, or institution **in the home of a school district resident pursuant to N.J.S.A. 18A:38-2** as ~~referenced in that statute.~~ **As used in this section,** "court order" ~~as used in this paragraph~~ **shall** ~~does~~ not encompass orders of residential custody, under which claims of entitlement to attend **a** school ~~in a~~ district are governed by provisions of N.J.S.A. 18A:38-1 and the applicable standards set forth in N.J.A.C. 6A:22.





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6. A student over five and under twenty years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to a free public education, is eligible to attend school in ~~the~~ **this school** district pursuant to N.J.S.A. 18A:38-3.~~b(b)~~ if the student ~~had~~ 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(b)~~ shall not be obligated for transportation costs.
7. A student over five and under twenty years of age pursuant to N.J.S.A. 18A:38-1, or such younger or older student as is otherwise entitled by law to a free public education, is eligible to attend **the** school ~~in the~~ district pursuant to N.J.S.A. 18A:38-7.7 et seq. if the student resides on Federal property within the State.
8. **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.**
  - a. **For purposes of N.J.A.C. 6A:22-3.2(h) and Policy and Regulation 5111, "family crisis" shall include, but not be limited to:**
    - (1) **An instance of abuse such as domestic violence or sexual abuse;**
    - (2) **A disruption to the family unit caused by death of a parent or guardian; or**



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- (3) An unplanned displacement from the original residence such as fire, flood, hurricane, or other circumstances that render the residence uninhabitable.**
- b. 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.**
- (1) 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.**
- c. 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.**
- d. If the original school district of residence determines the situation does not meet the family crisis criteria outlined in 8.a. 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 twenty-one 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**



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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 twenty-one day appeal period in the absence of an appeal.

(1) 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.

(2) Within thirty calendar days of receiving the request and documentation, the Executive County Superintendent shall issue a determination whether the situation meets the family crisis criteria set forth at 8.a. 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.

(3) 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.

e. 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.



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- (1) 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 8.a. above.**
  
- (2) Within thirty 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.**
  
- f. In providing transportation to students under N.J.S.A. 18A:38-1.1, the Board shall use the most efficient and cost-effective means available and in conformance with all laws governing student transportation.**
  
- g. 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.**
  - (1) Eligible costs shall include transportation for students who are required to be transported pursuant to N.J.S.A. 18A:39-1.**



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(2) The school district 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.

(3) 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).

h. Nothing in N.J.A.C. 6A:22-3.2 shall prevent the Board of Education from allowing a student to enroll without the payment of tuition pursuant to N.J.S.A. 18A:38-3.a.

i. Nothing in N.J.A.C. 6A:22-3.2 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 of Education 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.

## D. Housing and Immigration Status

1. A student's eligibility to attend school shall not be affected by the physical condition of an applicant's housing, or his or her an applicant's compliance with local housing ordinances or terms of lease shall not affect eligibility to attend school.

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



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- a. However, the provisions of N.J.S.A. 18A:38-1 and N.J.A.C. 6A:22 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 in order to apply to the INS for issuance of a visa for the purpose of limited study on a tuition basis in a United States public secondary school (“F-1” Visa<sup>2</sup>).

### 3. F-1 Visa Students

**The school district will not permit the attendance of F-1 Visa students into the school district.**

- E. Nothing in Policy and Regulation 5111 or N.J.A.C. 6A:22 shall be construed to limit the discretion of the Board to admit nonresident students, or the ability of a nonresident student to attend school with or without payment of tuition, with the consent of the district Board pursuant to N.J.S.A. 18A:38-3.(a).

### F. Proof of Eligibility

1. The **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:
  - a. Property tax bills; deeds; contracts of sale; leases; mortgages; signed letters from landlords; and other evidence of property ownership, tenancy, or residency;
  - b. Voter registrations; licenses; permits; financial account information; utility bills; delivery receipts; and other evidence of personal attachment to a particular location;
  - c. Court orders; State agency agreements; and other evidence of court or agency placements or directives;



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- d. Receipts; bills; cancelled checks; insurance claims or payments; and other evidence of expenditures demonstrating personal attachment to a particular location, or ~~where applicable,~~ to support ~~of~~ the student;
  - e. Medical reports; counselor or social worker assessments; employment documents; unemployment claims; benefit statements; and other evidence of circumstances demonstrating ~~where applicable,~~ family or economic hardship, or temporary residency;
  - f. 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;
  - g. Documents pertaining to military status and assignment; and
  - h. Any other business record or document issued by a governmental entity.
2. The **Board of Education** ~~district~~ may accept forms of documentation not listed above, and shall not exclude from consideration any documentation or information presented by **an applicant** ~~a person seeking to enroll a student.~~
  3. The **Board of Education** ~~district~~ shall consider the totality of information and documentation offered by an applicant, and shall not deny enrollment based on failure to provide a particular form ~~of documentation,~~ or a particular subset of documents, without regard to other evidence presented.
  4. The **Board of Education** ~~district~~ shall not ~~require or request, as a condition of enrollment~~ **on the receipt of** ~~in school,~~ any information or documents protected from disclosure by law, or pertaining to criteria **that** ~~which~~ are not **a legitimate bases** ~~basis~~ for determining eligibility to attend school. **They** ~~These~~ include, but are not limited to:
    - a. Income tax returns;



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- b. Documentation or information relating to citizenship or immigration/visa status, except as set forth in N.J.A.C. 6A:22-3.3(b);
  - c. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and
  - d. Social security numbers.
5. **The Board of Education may consider, in a manner consistent with Federal law, documents or information of the type referenced in 4. above, or pertinent parts thereof, may be considered by the district if voluntarily disclosed by the applicant seeking enrollment.** However, the **Board of Education** district may not, directly or indirectly, require or request such disclosure as an actual or implied condition of enrollment.

6. **In the case of a dispute between the school district and the parents or guardians of a student in regard to a student's eligibility to enroll in the school district or to remain enrolled in the school district pursuant to the provisions of N.J.S.A. 18A:38-1, the school district may request from the New Jersey Motor Vehicle Commission the parent or guardian's name and address for use in verifying a student's eligibility for enrollment in the school district.**

G. **Registration Forms and Procedures for Initial Assessment and Enrollment**

1. The **Board of Education** district shall use **Commissioner-provided** registration forms ~~provided by the Commissioner~~, or locally developed forms that:
  - a. Are consistent with the forms provided by the Commissioner;
  - b. Do not seek information prohibited by N.J.A.C. 6A:22 or any other provision of statute or rule;
  - c. Summarize, **for the applicant's reference**, the criteria for attendance set forth in N.J.S.A. 18A:38-1 ~~for applicant reference~~, and specify the nature and form of any sworn statement(s) to be filed;





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- d. Clearly state the purpose, ~~in relation to such criteria,~~ for which **the** requested information is being sought **in relation to the criteria**; and
  - e. **Notify applicants that an** ~~Provide notice to applicants that any~~ initial **eligibility** determination of eligibility is subject to a more thorough review and **evaluation** ~~re-evaluation,~~ and that ~~there is a potential for~~ **an** assessment of tuition **is possible** ~~in the event that~~ **if** an initially admitted applicant is later found ineligible.
2. **The Board of Education** ~~The district~~ shall **make available** ~~ensure that~~ sufficient numbers of registration forms, and ~~sufficient numbers of~~ trained registration staff, are available to ensure prompt **eligibility** determinations ~~of eligibility~~ and enrollment. **Enrollment a** ~~Applications for enrollment~~ may be taken by appointment, but ~~such~~ appointments **shall** ~~must~~ be promptly scheduled and **shall** ~~may~~ not unduly defer a student's attendance at school.
    - a. If the **school** district uses separate forms for ~~"affidavit student"~~ applications, rather than a single form for all types of ~~application for~~ enrollment, **affidavit student** ~~such~~ forms shall comply in all respects with the provisions of G.1. above. **When affidavit student** ~~Where such~~ 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** ~~whether or not~~ ~~they are~~ specifically requested.
      - (1) The **Board of Education or its agents** ~~district~~ shall not demand or suggest that guardianship or custody must be obtained before enrollment will be considered for a student living with a person other than the parent or guardian, since such student may qualify as an ~~"affidavit student"~~.
      - (2) **The Board of Education or its agents** ~~nor shall the not district~~ demand or suggest that ~~"affidavit student" proofs be produced by~~ an applicant seeking to enroll a student of whom the applicant has guardianship or custody **produce affidavit student proofs.**



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- b. A district-level **school** administrator designated by the Superintendent shall be ~~available, and~~ clearly identified to applicants **and available**, to assist persons who ~~are experiencing~~ **experience** difficulties with the enrollment process.
3. Initial **eligibility** determinations ~~of eligibility~~ shall be made upon presentation of an **enrollment** application, ~~for enrollment,~~ and enrollment shall take place immediately ~~in all cases~~ except **in cases** ~~those~~ of clear, uncontested denials.
- a. **Enrollment shall take place immediately when** ~~Where~~ 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** ~~enrollment shall take place immediately, but the applicant shall be placed on notice that removal will result~~ if defects in the application are not corrected, or an appeal is not filed, in accordance with subsequent notice to be provided pursuant to N.J.A.C. 6A:22-4.2.
- b. ~~Where an applicant~~ **When a student** appears ineligible based on information provided in the initial application, **the school district shall issue** a preliminary written notice of ineligibility ~~shall be provided~~, including an explanation of the right to appeal to the Commissioner of Education. Enrollment shall take place immediately if the applicant clearly indicates disagreement with the **school** district's determination and intent to appeal to the Commissioner.
- (1) An applicant whose student is enrolled pursuant to this provision shall be notified that the student will be removed; without a hearing before the Board; if no appeal is filed within the twenty-one day period established by N.J.S.A. 18A:38-1.
4. **When** ~~Where~~ enrollment is denied and no intent to appeal is indicated, applicants shall be advised ~~that~~ they shall comply with compulsory education laws. **When** ~~and shall, where~~ the student is between the ages of six and sixteen, **applicants also shall** be asked to complete a written statement indicating the student will be attending school in another **school** district, ~~attending~~ **or** a nonpublic school, or receiving instruction elsewhere than at a school pursuant to N.J.S.A. 18A:38-25. In the absence of this written statement **that the student will be attending school in**



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**another school district or nonpublic school, or receiving instruction elsewhere than at a school, designated staff shall report to** ~~from the parent or guardian, the district level school administrator designated by the Superintendent shall notify~~ the school district of actual domicile or residence, or the Department of Children and Families, ~~to report~~ a potential instance of “neglect” **for purposes of ensuring compliance with compulsory education laws,** ~~pursuant to N.J.S.A. 9:6-1 (“willfully failing to provide regular school education as required by law”).~~ **Staff** ~~The administrator designated by the Superintendent~~ shall provide the **school** district or the Department of Children and Families, ~~as the case may be,~~ with the student’s name, the name(s) of the parent/guardian/resident, and the student’s address to the extent known. **Staff** ~~and~~ shall **also** indicate ~~that~~ admission to the **school** district has been denied based on residency or domicile, and ~~that~~ there is no evidence of intent to arrange for the child to attend school or receive instruction elsewhere.

5. **Enrollment or attendance in the school district** ~~Where enrollment is denied and an intent to appeal is indicated, or where enrollment is provisional subject to further review or information, enrollment or attendance at school~~ shall not be conditioned on advance payment of tuition in whole or part **when enrollment is denied and an intent to appeal is indicated, or when enrollment is provisional and subject to further review or information.**
6. **The Board of Education** ~~The Superintendent or designee, shall ensure that information suggesting an applicant may be homeless is identified during~~ the registration process; **identifies information suggesting an applicant may be homeless** so ~~that, where appropriate,~~ procedures may **be implemented** ~~ensue~~ in accordance with N.J.A.C. 6A:17-2 - Education of Homeless Children.
7. Enrollment or attendance in the **school** district shall not be denied based upon absence of ~~the~~ **a** certified copy of **the student’s** birth certificate or other proof of ~~a student’s~~ **his or her** identity **as** required within thirty days of initial enrollment, pursuant to N.J.S.A. 18A:36-25.1.



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8. Enrollment in the **school** district shall not be denied based upon absence of student medical information. **However,** ~~although~~ actual attendance at school may be deferred **until the student complies with student immunization rules set forth in** ~~as necessitated by compliance with rules regarding immunization of students, N.J.A.C. 8:57-4.1 et seq.~~
9. **When e** Enrollment in the **school** district, attendance at school, or **the receipt of** educational services ~~where attendance~~ 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 ~~that~~ the **student's** initial educational placement ~~of the student~~ may be subject to revision upon **the school district's** receipt of records or further assessment of the student ~~by the district.~~

## H. Notice of Ineligibility

1. **When a student is found** ~~If the district finds the applicant ineligible to attend the schools of the district pursuant to N.J.A.C. 6A:22 or the~~ **student's initial** application ~~initially submitted~~ is found to be deficient upon subsequent review or investigation, **the school district notice** shall immediately **provide notice** ~~be provided~~ to the applicant **that is** consistent with **Commissioner-provided** sample form(s) **and meets the requirements of N.J.A.C. 6A:22-4 et seq.** ~~provided by the Commissioner.~~
  - a. Notices shall be in writing; in English and in the native language of the applicant; issued by the Superintendent; and directed to the address at which the applicant claims to reside.
2. Notices of ineligibility shall include:
  - a. In cases of denial, a clear description of the specific basis on which the determination of ineligibility was made:



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- (1) **The description shall be** sufficient to allow the applicant to understand the basis for the decision and determine whether to appeal; **and**
  - (2) **The description** ~~Such description~~ shall identify the specific **subsection** ~~section~~ of N.J.S.A. 18A:38-1 under which the application was decided.
- b. In cases of provisional eligibility, a clear description of the missing documents or information that **still must** ~~shall~~ be provided ~~in order to attain~~ **before** a final eligibility status **can be attained** under the applicable provision of N.J.S.A. 18A:38-1;
  - c. A clear statement of the applicant's right to appeal to the Commissioner of Education within twenty-one days of the ~~date of the~~ notice **date**, along with an informational document provided by the Commissioner describing how to file an appeal;
  - d. A clear statement ~~of that~~ the student's **right** ~~is entitled~~ to attend school for the twenty-one day period during which an appeal can be made to the Commissioner. **It also shall state** ~~but that, if missing information is not provided or an appeal is not filed,~~ the student will not be permitted to attend school beyond the **twenty-first** ~~21<sup>st</sup>~~ day following the **notice** ~~date of the notice~~ **if missing information is not provided or an appeal is not filed;**
  - e. A clear statement ~~that~~ **of** the student's **right** ~~is entitled~~ to continue attending school **while an appeal to the Commissioner is pending** ~~during the pendency of an appeal to the Commissioner;~~
  - f. 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** ~~entitlement~~ to attend ~~the schools of the~~ **school** district, or the applicant **withdraws** ~~abandons~~ the appeal ~~through withdrawal,~~ **fails** ~~failure~~ to prosecute or **abandons the appeal by** any means other than settlement, the applicant may be assessed, by order of the Commissioner enforceable in Superior Court, tuition for any period of ineligible attendance, including the initial twenty-one day period and the period during which the appeal was pending before the Commissioner;



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- g. A clear statement of the approximate rate of tuition, pursuant to N.J.A.C. 6A:22-6.3, that an applicant may be assessed for the year at issue if the applicant does not prevail on appeal, or elects not to appeal:
- (1) If removal is based on the student's **move** ~~having moved~~ from the **school** district, the notice of ineligibility shall also provide information as to whether district **P**olicy permits continued attendance, with or without tuition, for students who move from the **school** district during ~~the course of~~ the school year.
- h. The name of a contact person in the **school** district who can ~~provide assistance~~ **assist** in explaining the **notice's** contents ~~of the notice~~; and
- i. **When** ~~Notice that, where~~ no appeal is filed, **notice that** the parent or guardian shall still comply with compulsory education laws;. **In** ~~and that, in~~ the absence of a written statement from the parent or guardian that the student will be attending school in another **school** district **or non-public school**, ~~attending a nonpublic school~~, or receiving instruction elsewhere than at a school, ~~the~~ **school** district **staff** ~~level administrator designated by the Superintendent~~ shall notify the school district of actual domicile/residence, or the Department of Children and Families, of a potential instance of "neglect" pursuant to N.J.S.A. 9:6-1. ~~("willfully failing to provide regular school education as required by law"). Such staff shall provide the student's name, the name(s) of the parent/guardian/resident, address to the extent known, denial of admission to the district based on residency or domicile, and absence of evidence of intent to attend school or receive instruction elsewhere, for~~ **For** purposes of facilitating enforcement of the State compulsory education requirement (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**



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**domicile, and absence of evidence of intent to attend school or receive instruction elsewhere.**

## I. Removal of Currently Enrolled Students

1. Nothing in N.J.A.C. 6A:22 and this Regulation shall preclude the Board of Education from identifying seeking to identify, through further investigation or periodic requests for current revalidation of previously determined eligibility status, students enrolled in the school district who may be ineligible for continued attendance due to error in initial assessment, changed circumstances, or newly discovered information.
2. When a student, who is enrolled and attending school in the district based on an initial eligibility determination of eligibility, is later determined to be ineligible for continued attendance, the Superintendent may apply to the Board of Education for the student's removal of the student.
  - a. The Superintendent shall issue a preliminary notice of ineligibility meeting the requirements of N.J.A.C. 6A:22-4.2. However, such the notice shall also provide for a hearing before the Board of Education prior to a final decision on removal.
3. No student shall be removed from school unless the parent, guardian, adult student, or resident keeping an "affidavit student," as the case may be, has been informed of his or her entitlement to a hearing before the Board of Education.
4. Once the hearing is held, or if the parent, guardian, adult student, or resident keeping an "affidavit student," as the case may be, does not respond to the Superintendent's notice within the designated time frame to the Superintendent's notice or appear for the hearing, the Board of Education shall make a prompt determination of the student's eligibility or ineligibility and shall immediately provide notice thereof in accordance with the requirements of N.J.A.C. 6A:22-4.2.



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5. Hearings required pursuant to N.J.A.C. 6A:22-4.3 may be conducted by **the full Board of Education or a Board** committee, at the discretion of the full Board. **If the hearing is conducted by a Board Committee, the Committee** ~~which~~ shall make a recommendation to the full Board for action. **However, n**o student **shall may** be removed except by vote of the 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.
- J. Appeal to the Commissioner
1. **An applicant may appeal** ~~A district determination that a student is ineligible to attend the schools of the district may be appealed to the Commissioner~~ **of Education a school district determination that a student is ineligible to attend its schools. Appeals shall be initiated by petition, which shall be filed** ~~by the parent, guardian, adult student or resident keeping an "affidavit student," as the case may be. Such appeals shall proceed~~ in accordance with N.J.S.A. 18A:38-1 and N.J.A.C. 6A:3-8.1 ~~et seq.~~ and shall proceed as a contested case pursuant to N.J.A.C. 6A:3.
    - a. Pursuant to N.J.S.A. 18A:38-1, **b(1)(b)1**, appeals of "affidavit student" **ineligibility** ~~eligibility~~ determinations shall be filed by the resident keeping the student.
- K. Assessment and Calculation of Tuition
1. If no appeal to the Commissioner is filed by the parent, guardian, adult student, or **school** district resident keeping an "affidavit" student ~~following notice of a~~ **an ineligibility** ~~determination of ineligibility,~~ the Board **of Education** may assess tuition for **up to one year** ~~any period~~ of a student's ineligible attendance, including the twenty-one day period provided by N.J.S.A. 18A:38-1 for appeal to the Commissioner.
    - a. If the responsible party does not pay the tuition assessment, the 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 Board **of Education** pursuant to N.J.A.C. 6A:3-12, on the judgment docket of the Superior Court, Law Division.





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2. If an appeal to the Commissioner is filed by the parent, guardian, adult student, or **school** district resident keeping an “affidavit” student”, where **and** the petitioner does not sustain the burden of demonstrating **the student’s right** entitlement to attend the schools of the district, or **the petitioner withdraws** ~~abandons~~ the appeal, ~~through withdrawal, failure~~ **fails** to prosecute, or **abandons the appeal by** any means other than settlement agreeing to waive or reduce tuition, the Commissioner may **assess** ~~order assessment of tuition for any~~ **for the** period of a student’s ineligible attendance in a district, including the twenty-one day period for filing of an appeal and 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 twenty-one day period to file an appeal.**
  - a. Upon the Commissioner’s finding that an appeal has been abandoned, the Board **of Education** may remove the student from school and seek tuition for **up to one year** ~~the period~~ 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.** ~~However, If~~ **If** the record of the appeal includes a calculation reflecting the **tuition** rate(s) ~~of tuition~~ for the year(s) at issue, the per diem **tuition** ~~rate of tuition~~ for the current year; and the date on which the student’s ~~ineligibility~~ **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 the school district’s error.** If the record does not include such a calculation, **and** ~~but~~ the Board **of Education** has filed a counterclaim for tuition, the counterclaim shall proceed to a hearing notwithstanding that the petition has been abandoned.
  - b. An order of the Commissioner assessing tuition is enforceable through recording, **upon request of the 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** ~~pursuant to~~ N.J.S.A. 2A:58-10.



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3. Tuition assessed pursuant to the provisions of N.J.A.C. 6A:22-6 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:23-3.1~~ **6A:23A-17.1**. The individual student's record of daily attendance shall not ~~impact on such~~ **affect the** calculation.
4. Nothing in N.J.A.C. 6A:22 **shall** preclude an equitable determination by the Board **of Education** or the Commissioner; ~~that, when the particular circumstances of a matter so warrant,~~ tuition shall not be assessed for all or part of any period of a student's ineligible attendance in the **school** district **when the particular circumstances of a matter so warrant. In making the determination, the Board of Education or Commissioner shall consider whether the ineligible attendance was due to the school district's error.**

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