

DIRECTIONS FOR APPEALING A LOCAL BOARD'S RESIDENCY DETERMINATION TO THE COMMISSIONER OF EDUCATION

Statute provides for appeals of school district residency determinations to be filed within **21 days of the date of the district's decision.*** Therefore, time is of the essence and persons seeking to appeal should, if necessary, receive assistance from their county offices of education. Please note that where appeal is taken from a determination of ineligibility under *N.J.S.A.* 18A:38-1(b)1 ("affidavit" students), such appeal shall be filed by the resident making the claim of entitlement, not by the parent or guardian.

There are two ways in which a parent/guardian/resident/adult student may file an appeal with the Commissioner: 1) He/she may submit a **standard Petition of Appeal** in accordance with *N.J.A.C.* 6A:3-1.3 and 1.4, or 2) **in the case of a petitioner acting without legal representation ("pro se"), he/she may instead submit a letter petition** in accordance with *N.J.A.C.* 6A:3-8.1. Both methods of filing are described below. In either case, petitioners should be aware that they are initiating an agency hearing procedure where they, or their counsel, will most likely be required to present testimony and evidence in support of their claim before a judge of the Office of Administrative Law (OAL). For more information about this process, petitioners are urged to visit the OAL website at <http://www.state.nj.us/oal/hearings.html>.

STANDARD PETITION OF APPEAL (N.J.A.C. 6A:3-1.3 and 1.4)

The regulations for filing Petitions of Appeal may be obtained at a library, the local school district, the county office of education, the Department of Education's web site (at <http://www.state.nj.us/njded/code/title6a/chap3/>) or by mail from the Bureau of Controversies and Disputes (609-292-5706).

A standard Petition of Appeal includes: 1) The **petition** itself; 2) a **verification** and 3) **proof that petitioner has served the respondent** (Board of Education) with a copy of the Petition of Appeal.

Petition: A petition is a written document, submitted in original with two copies, including the following:

- a. Name, address, telephone number and fax number, if available, of the petitioner;
- b. Name and address of the respondent (Board of Education);
- c. Petitioner's allegations and specific facts supporting them;
- d. Signature of the petitioner, or his/her attorney; and
- e. Date when the petition is prepared.

Verification: A petition must verify the facts alleged. This means that the petitioner must write or type the statement contained in *N.J.A.C.* 6A:3-1.4 indicating that he/she, as petitioner, attests that the facts contained in the petition are true to the best of his/her knowledge. He/she must then sign the statement and have it notarized.

Proof of Service: A copy of the petition must be served upon each respondent (*N.J.A.C.* 6A:3-1.3). In the case of residency disputes, the Board of Education will be served. A copy should be submitted to the office of the Board Secretary, or the Board's attorney, if known. *The petitioner should also submit to the Bureau of Controversies and Disputes, with the Petition of Appeal, proof that respondent was served.* That proof may be:

- a. An acknowledgment of service (a "receipt") signed by the attorney for the respondent (Board), or signed and acknowledged by the respondent (Board) or its agent (e.g. the Board Secretary) indicating the address at which the respondent was served;
- b. A sworn affidavit of the person making service (mailing or delivering the petition), indicating the address at which the respondent was served and the date and manner of service;

* Where an appeal is filed within 21 days of the date of the district's decision, *N.J.S.A.* 18A:38-1 provides that no child shall be denied admission during the pendency of the proceedings before the Commissioner. The child shall not be removed from school during the 21-day period in which the interested party may contest the district's decision. However, if in the judgment of the Commissioner the evidence does not support the claim of the petitioner, or if the appeal is withdrawn or abandoned, the Commissioner the petitioner may be assessed tuition for the student prorated to the time of the student's ineligible attendance in the school district. Appeals may be filed after expiration of the 21-day period, but the student's right to attend school during the pendency of the appeal is not guaranteed by operation of statute and the petitioner must submit an application for emergent relief in accord with *N.J.A.C.* 6A:3-1.6.

- c. A certificate of service signed by the attorney making service (mailing or delivering the petition) indicating the address at which the respondent was served;
- d. A copy of petitioner's receipt for certified mailing to respondent. The return receipt (green card) is not required for proof of service.

Upon receipt, the Bureau of Controversies and Disputes will acknowledge the petition in writing and notify the school district and county superintendent of its filing.

LETTER PETITION (N.J.A.C. 6A:3-8.1)

Petitioners who are *not* represented by an attorney ("*pro se*") may submit a letter petition, instead of the standard Petition of Appeal as described above, *provided that the letter contains the following information:*

- a. Petitioner's name, address, telephone number, and fax number where available;
- b. The name of the respondent board of education;
- c. A clear indication that the petitioner is appealing a determination of ineligibility to attend school in the district based on residency or domicile, identifying the date of the district's decision, and including, where possible, a copy of the district's written determination of ineligibility; and
- d. A signed statement that the petitioner's claim of entitlement is based upon facts which are true to the best of the petitioner's knowledge and belief, and that the petitioner understands that s/he may be assessed tuition through an order enforceable in Superior Court and recordable as a judgment against him/her if the claim is abandoned or withdrawn and/or if the Commissioner finds the student ineligible for free education in the district.

Please Note: Sample letter petition forms are available from your school district, the Office of the County Superintendent, the Bureau of Controversies and Disputes, or on page 17 of the Department's Informational Package at <http://www.state.nj.us/education/code/current/title6a/chap22sample.pdf> (PDF) or <http://www.state.nj.us/education/code/current/title6a/chap22sample.doc> (Word).

Appeals from *pro se* petitioners need not be served upon the respondent district Board of Education. While *pro se* petitioners *may* serve their petitions on the Board, **they may also effectuate service through the Bureau of Controversies and Disputes.** Upon receipt of any *pro se* residency appeal which has not been served on the Board, the Bureau will transmit a copy of the letter petition to the board and county superintendent via fax, together with notice of the Board's obligation to answer the letter petition pursuant to *N.J.A.C. 6A:3-1.5* and to ensure, as required by *N.J.S.A. 18A:38-1*, the attendance of petitioner's child(ren) pending the outcome of the appeal.

* * * * *

ALL PETITIONS SHOULD BE SUBMITTED TO:

Commissioner of Education
c/o Director of the Bureau of Controversies and Disputes
New Jersey State Department of Education
P.O. Box 500
Trenton, NJ 08625-0500
A petition may be faxed, with hard copy following by mail, to 609-292-4333.

Following submission of a proper petition, the board will be required to file an answer and, in most cases, the next step will be a hearing before a judge at the Office of Administrative Law, leading to an initial decision containing the judge's recommended findings of fact and conclusions of law. The Commissioner will then review the matter and issue a final decision, which may be appealed to the Appellate Division of the Superior Court.

Please Note: These instructions do not constitute legal advice, nor are they meant to take the place of applicable statute or regulation, which should be consulted by petitioners and will control if procedural issues arise in any appeal. These instructions are intended solely as an aid to preparation and submission of a petition of appeal.

