

STATEMENT OF SPECIAL CIRCUMSTANCES

Please indicate if any of the following apply.

_____ The student is the child of a parent or guardian who has moved to another District as the result of being homeless.

_____ The student has been placed in the home of a District resident other than the parent or guardian by court order. (You will be required to provide a copy of the order.)

_____ The student is living with a parent or guardian who is temporarily residing in the District.

_____ The student has been placed in the District by the Division of Youth and Family Services acting as the student’s legal guardian.

_____ The student is a child of a parent or guardian who previously resided in the District and is a member of the New Jersey National Guard or the United States reserves ordered into active service in time of war or national emergency.

_____ The student is kept in the home of a person domiciled in the District other than the parent or legal guardian, and the parent/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. If this applies, when is the parent or guardian expected to return from active military duty?

_____ The student resides on federal property. Where? _____

_____ The student’s circumstances do not appear to be addressed anywhere in this application. I understand that I will be contacted by (name of administrator or office) for further information.

Parent/Guardian/Applicant

Date

Pursuant to N.J.A.C. 6A:22-1.1 et seq., a district board of education shall admit the following students to its schools: (1) any student domiciled within the district; (2) any student kept in the home of a person other than the student’s parent or legal guardian 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; (3) any student kept in the home of a person domiciled in the district, other than the parent or legal guardian where the parent or legal 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; (4) any student whose parent or legal guardian temporarily resides within the district not solely for purposes of a student’s attending school within the district of temporary residence; (5) any student whose parent or guardian moves to another district as the result of being homeless, subject to the provisions of N.J.A.C. 6:5, “Provisions for the Education of Homeless Children and Youth”; (6) any student placed in the home of a district resident by court order pursuant to N.J.S.A. 18A:38-2; (7) any student previously residing in the district if the parent or guardian is a member of the New Jersey National Guard or the United States reserves and has been ordered into active service in time of war or national emergency pursuant to N.J.S.A. 18A:38-3(b); and (8) any student residing on federal property within the State pursuant to N.J.S.A. 18A:38-7.7 et seq.

Any initial determination of the student’s eligibility to attend school in this district is subject to more thorough review and subsequent re-evaluation, and tuition may be assessed in the event that an initially admitted student is later found ineligible. If your child is found ineligible, now or later, you will be provided the reasons and instructions on how to appeal.

**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 of domicile" students), such appeal shall be filed by the resident making the claim of entitlement, not by the parent or legal 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 website (at <http://www.state.nj.us/njded/code/title6a/chap3/>) or by mail from the Bureau of Controversies and Disputes (609-292-5705).

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;

^{*} 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 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 accordance with *N.J.A.C. 6A:3-1.6*.

- b. A sworn affidavit of the person making service (mailing or delivering the petition), indicating the address at which the respondent was served;
- 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.

An original and two copies of a standard Petition of Appeal must be submitted to the address in the box below. The Bureau of Controversies and Disputes will acknowledge the petition in writing.

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 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 party 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 petitioning party's claim of entitlement is based upon facts which are true to the best of petitioner's knowledge and belief.

Please Note: Sample letter petition forms are available from your school district or the Office of the County Superintendent.

Appeals from *pro se* petitioners need not be submitted in triplicate or 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 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 effectuate, as required by *N.J.S.A. 18A:38-1*, the attendance of petitioner's child pending the outcome of the appeal.

Letter petitions must be submitted to the address in the box below. The Bureau of Controversies and Disputes will acknowledge the petition in writing.

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 100 Riverview Plaza 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 State Board of Education, and thereafter to the courts.

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 take precedence over these instructions if procedural issues arise in any appeal. These instructions are intended solely as an aid in preparation and submission of an appeal petition.

PRO SE RESIDENCY APPEAL:
N.J.S.A. 18A:38-1/ N.J.A.C. 6A:3-8.1/N.J.A.C. 6A:22-1.1 et seq.

To: Commissioner of Education
 c/o Director of the Bureau of Controversies and Disputes Fax: (609) 292-4333
 New Jersey State Department of Education
 100 Riverview Plaza
 P.O. Box 500
 Trenton, NJ 08625

Dear Commissioner: (Please Print or Type)

1. My name is _____

2. My address is: _____
 Number Street Town/City Zip Code

3. My phone number is: (____) _____
 Area Code Number Fax If Available

4.. The _____ School District located
 in _____

Town/City County

will not allow the following child, who resides with me, to attend school under *N.J.S.A. 18A:38- 1*.

List name of child and your relationship to him/her (i.e., parent, legal guardian, other).

5. Give a brief explanation of why attendance is being denied, including date of the District's decision. Please attach, if possible, a copy of the District's written determination. (Additional sheets may be used.)

6. With this letter, I am appealing the District's decision. My claim of entitlement is based upon facts which are true to the best of my knowledge. I understand that if the Commissioner determines the child to be ineligible for a free education in this District or finds that I have abandoned or withdrawn this appeal, I may be assessed tuition costs for the period of the child's ineligible attendance.

 Signature

 Date