R 5111.13 ELIGIBILITY OF RESIDENT/NONRESIDENT STUDENTS – CHOICE SCHOOL DISTRICT

A. Definitions – N.J.A.C. 6A:22-1.2

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).

2. "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.

4. "Commissioner" means the Commissioner of Education or their designee.

5. "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 that the child does not actually live with the custodian. "Guardian" also means the Department of Children and Families for purposes of N.J.S.A. 18A:38-1.e.

B. Students Domiciled in the District – N.J.A.C. 6A:22-3.1

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:

   a. A student is domiciled in the school district when the student is the child of a parent or guardian whose domicile is located within the school district.

(1) When a student's parents or guardians are domiciled within different school districts and there is no court order or written agreement between the parents designating the school district of 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. N.J.A.C. 6A:22-3.1(a)1. and B.1.a. above shall apply regardless of which parent has legal custody.

(2) 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 October 16 preceding the application date.

(a) When 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 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 with the parent or guardian previously indicated, the student shall attend school in the school district of domicile of the parent or guardian with whom the student actually lives as of the last school day prior to October 16.

(b) When the domicile of a 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 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 to attend school in the parent or guardian's school district of domicile pursuant to the provisions of N.J.A.C. 6A:22, Policy 5111.13, and this Regulation.

(4) No school district shall be required to provide transportation for a student residing outside the school district for all or part of the school year unless transportation is based upon the home of the parent or guardian domiciled within the school district or otherwise required by law.

b. A student is domiciled in the school district when the student has reached the age of eighteen or is emancipated from the care and custody of a parent or guardian and has established a domicile within the school district.

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:34-54. ("home state" definition) and 2A:34-65.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.

d. A student is domiciled in the school district when 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.

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 the

municipality to which the majority of the dwelling's or unit's property tax is paid.

a. When property tax is paid in equal amounts to two or more municipalities and there is no established assignment for students residing in the affected dwellings, the school district of domicile for school attendance purposes shall be determined through assessment of individual proofs of eligibility provided pursuant to N.J.A.C. 6A:22-3.4 and E. below.

b. N.J.A.C. 6A:22-3.1(b) and B.2. above shall not preclude the attendance of currently enrolled students who were permitted to attend the school district prior to December 17, 2001.

3. When a student's parent or guardian elects to exercise such entitlement, nothing in N.J.A.C. 6A:22-3.1 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. or the temporary residency (less than one year) provision of N.J.S.A. 18A:38-1.d.

4. 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. 18A:38-3.1. shall cease at the end of the current school year unless the child is domiciled in the school district.

C. Other Students Eligible to Attend School – N.J.A.C. 6A:22-3.2

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 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 the person is domiciled in the school district and is supporting the student without remuneration as if the student were their own child.

a. A student is not eligible to attend this school district pursuant to N.J.A.C. 6A:22-3.2(a) and C.1. above unless:

   (1) The student's parent or guardian has filed, together with documentation to support its validity, a sworn statement that the parent or guardian 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:

      (a) A sworn statement that the person 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 to school requirements; and

      (b) A copy of their lease if a tenant, 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 N.J.A.C. 6A:22-3.2 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).

c. A student shall not be deemed ineligible under N.J.A.C. 6A:22-3.2 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.

d. A student shall not be deemed ineligible under N.J.A.C. 6A:22-3.2 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.

e. Pursuant to N.J.S.A. 18A:38-1.c., any person who fraudulently allows a child of another person to use their residence and is not the primary financial supporter of that child and any person who fraudulently claims to have given up custody of their 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 this 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.

a. Eligibility under N.J.A.C. 6A:22-3.2(b) and C.2. above shall cease at the end of the school year during which the parent or guardian 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 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 district of temporary residence, notwithstanding the existence of a domicile elsewhere.

a. When required by the Board, the parent or guardian shall demonstrate the temporary residence is not solely for purposes of the student attending the school district of temporary residence;

b. When one of a student's parents or guardians temporarily resides in 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)1.i. 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 required by the Board, the temporary residence is not solely for purposes of a student's attending the school 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 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 this school district pursuant to N.J.S.A. 18A:38-2. 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 section, "court order" shall not encompass orders of residential custody under which claims of entitlement to attend a school 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.

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 this school district pursuant to N.J.S.A. 18A:38-3.b. if the student 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. 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 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 purpose of N.J.A.C. 6A:22-3.2(h), Policy 5111.13, and this Regulation, "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

      (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 C.8.a. above, the Superintendent or designee shall notify the parent or guardian in writing. The notification shall inform the parent or guardian of their right to appeal the decision within twenty-one calendar days of the parent's or guardian's receipt of the notification, and shall state that if such appeal is denied, the parent or guardian may be assessed the costs for transportation provided to 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 at C.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.

(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 at C.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.

(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 New Jersey Department of Education'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 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, their 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 – N.J.A.C. 6A:22-3.3

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

2. Except as set forth in D.2.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 and C. above shall be enrolled without regard to, or inquiry concerning, immigration status.

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).

3. F-1 Visa Students

The school district is not required to, but may permit the attendance of F-1 Visa students into the school district only with the payment of full tuition and a signed tuition contract. The district may require advance payment of full tuition before providing the requested I-20 Form, in accordance with the provisions of Federal regulation 8 CFR 214.3. A F-1 Visa is granted to a foreign student through an application process that must include, but is not limited to, signed approval by the receiving school district exhibiting the receiving school district will accept the foreign student for enrollment and the foreign student's proof of financial means to pay the full tuition to the receiving school district for the academic year. The host family must be domiciled in the school district and shall submit a request to the Superintendent of Schools with documentation as determined by the Superintendent or designee. A student with a F-1 Visa must be approved by the Board for attendance in the school district. The student's continued attendance in the school district shall be conditioned on a satisfactory attendance and disciplinary record.

4. J-1 Visa Students

The school district is not required to, but may permit the attendance of J-1 Visa students into the school district. The host family must be domiciled in the school district and shall submit a request to the Superintendent of Schools with documentation as determined by the Superintendent or designee. A student with a J-1 Visa must be approved by the Board for attendance in the school district and shall not pay tuition. The student's continued attendance in the school district shall be conditioned on a satisfactory attendance and disciplinary record.

E. Proof of Eligibility – N.J.A.C. 6A:22-3.4

1. The 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;

d. Receipts; bills; cancelled checks; insurance claims or payments; and other evidence of expenditures demonstrating personal attachment to a particular location, or to support the student;

e. Medical reports; counselor or social worker assessments; employment documents; unemployment claims; benefit statements; and other evidence of circumstances demonstrating 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 may accept forms of documentation not listed in N.J.A.C. 6A:22-3.4(a) and E.1. above, and shall not exclude from consideration any documentation or information presented by an applicant.

3. The Board 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 or subset of documents without regard to other evidence presented.

4. The Board 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:

a. Income tax returns;

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) and D.2. above;

c. Documentation or information relating to compliance with local housing ordinances or conditions of tenancy; and

d. Social security numbers.

5. The Board may consider, in a manner consistent with Federal law, documents or information referenced in N.J.A.C. 6A:22-3.4(d) and E.4. above, or pertinent parts thereof if voluntarily disclosed by the applicant. However, the Board 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 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 (NJMVC) the parent or guardian's name and address for use in verifying a student's eligibility for enrollment in the school district. The NJMVC shall disclose to a school district the information requested in accordance with procedures established by the NJMVC. However, the school district shall not condition enrollment in the district on immigration status or on the fact that the NJMVC does not have the name or address of the parent on file.

F. Registration Forms and Procedures for Initial Assessment – N.J.A.C. 6A:22-4.1

1. The Board of Education shall use Commissioner-provided registration forms pursuant to N.J.A.C. 6A:22-4.1(a), or locally developed forms that:

a. Are consistent with the Commissioner-provided forms;

b. Do not seek information prohibited by N.J.A.C. 6A:22-4 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., and specify the nature and form of any sworn statement(s) to be filed;

d. Clearly state the purpose for which the requested information is being sought in relation to the criteria; and

e. Notify applicants that an initial eligibility determination is subject to a more thorough review and evaluation, and that an assessment of tuition is possible if an initially admitted applicant is later found ineligible.

2. The Board 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.

a. 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 N.J.A.C. 6A:22-4.1(a) and G.1. above. When affidavit student forms are used, the school district shall provide them to any person attempting to register a student of whom they are not the parent or guardian, even if not specifically requested.

(1) The Board or its agents 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 or its agents shall not demand or suggest that an applicant seeking to enroll a student of whom the applicant has guardianship or custody produce affidavit student proofs.

b. A district-level administrator designated by the Superintendent shall be clearly identified to applicants and available to assist persons who experience difficulties with the enrollment process.

3. 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.

a. Enrollment shall take place immediately when 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 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 and G. below.

b. 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 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 N.J.A.C. 6A:22-4.1(c)2.i. and F.3.b. above 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 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 sixteen, 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 shall also 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.

5. Enrollment or attendance in the school district 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 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.

7. Enrollment or attendance in the school district shall not be denied based upon absence of a certified copy of the student's birth certificate or other proof of their identity as required within thirty days of initial enrollment, pursuant to N.J.S.A. 18A:36-25.1.

8. Enrollment in the school district shall not be denied based upon the absence of student medical information. However, actual attendance at school may be deferred until the student complies with student immunization rules set forth in N.J.A.C. 8:57-4.

9. When enrollment in the school district, attendance at school, or the receipt of educational services 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 the student's initial educational placement may be subject to revision upon the school district's receipt of records or further assessment of the student.

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

1. When a student is found ineligible to attend the school district pursuant to N.J.A.C. 6A:22, Policy 5111.13, and this Regulation or the student's initial application is found to be deficient upon subsequent review or investigation, the school district shall immediately provide notice to the applicant that is consistent with Commissioner-provided sample form(s) and meets the requirements of N.J.A.C. 6A:22-4.2 and F. above and H. below.

   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:

(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 shall identify the specific subsection 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 be provided 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 notice date, along with an informational document provided by the Commissioner describing how to file an appeal;

d. A clear statement of the student's right to attend school for the twenty-one day period during which an appeal can be made to the Commissioner. It also shall state the student will not be permitted to attend school beyond the twenty-first day following the notice date if missing information is not provided or an appeal is not filed;

e. A clear statement of the student's right to continue attending school while an appeal to the Commissioner is pending;

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 to attend the school district, or the applicant withdraws the appeal, fails 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;

g. A clear statement of the approximate rate of tuition, pursuant to N.J.A.C. 6A:22-6.3, J.2. and J.3. below, 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 from the school district, the notice of ineligibility shall also provide information as to whether district Policy permits continued attendance, with or without tuition, for students who move from the school district during the school year.

h. The name of a contact person in the school district who can assist in explaining the notice's contents; and

i. When no appeal is filed, notice that the parent or guardian shall still comply with compulsory education laws. 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, or receiving instruction elsewhere than at a school, school district staff 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. 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 domicile, and absence of evidence of intent to attend school or receive instruction elsewhere.

H. Removal of Currently Enrolled Students – N.J.A.C. 6A:22-4.3

1. Nothing in N.J.A.C. 6A:22-4, Policy 5111.13, and this Regulation shall preclude the 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 due to error in initial assessment, changed circumstances, or newly discovered information.

2. 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 Superintendent may apply to the Board for the student's removal.

a. The Superintendent shall issue a preliminary notice of ineligibility meeting the requirements of N.J.A.C. 6A:22-4.2 and G. above. However, the notice shall also

provide for a hearing before the Board 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, has been informed of their entitlement to a hearing before the Board.

4. 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 Superintendent's notice or appear for the hearing, the Board 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 and G. above.

5. Hearings required pursuant to N.J.A.C. 6A:22-4.3 may be conducted by the full Board or a Board committee, at the discretion of the full Board. If the hearing is conducted by a Board Committee, the Committee shall make a recommendation to the full Board for action. However, no student shall be removed except by vote of the Board taken at a meeting duly convened and conducted pursuant to N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act.

I. Appeal to the Commissioner – N.J.A.C. 6A:22-5.1

1. An applicant may appeal 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 in accordance with N.J.S.A. 18A:38-1. and N.J.A.C. 6A:3-8.1 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), appeals of affidavit student ineligibility determinations shall be filed by the resident keeping the student.

J. Assessment and Calculation of Tuition – N.J.A.C. 6A:22-6

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 an ineligibility determination, the Board of Education may assess tuition for up to one year 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 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 pursuant to N.J.A.C. 6A:3-12, on the judgment docket of the Superior Court, Law Division.

2. 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 twenty-one day period to file an appeal.

   a. Upon the Commissioner's finding that an appeal has been abandoned, the Board 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) and J.1. above 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 their 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 the Board 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 pursuant to N.J.A.C. 6A:3-12, on the judgment docket of the Superior Court, Law Division, in accordance with N.J.S.A. 2A:58-10.

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:23A-17.1. The individual student's record of daily attendance shall not affect the calculation.

4. Nothing in N.J.A.C. 6A:22, Policy 5111.13, and this Regulation shall preclude an equitable determination by the Board or the Commissioner that 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 or Commissioner shall consider whether the ineligible attendance was due to the school district's error.

Adopted: