SYNOPSIS
Provides for educational stability of children placed in resource family homes and that school district of residence for the child shall be present district of residence of parent or guardian.

CURRENT VERSION OF TEXT
As reported by the Senate Budget and Appropriations Committee on May 27, 2010, with amendments.

(Sponsorship Updated As Of: 6/25/2010)
[A2137] [3R] CONNERS, CONAWAY

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AN ACT concerning children placed in resource family homes, 
amending P.L.1979, c.207, and amending and supplementing 
P.L.1951, c.138.

BE IT ENACTED by the Senate and General Assembly of the State 
of New Jersey:

1. Section 19 of P.L.1979, c.207 (C.18A:7B-12) is amended to 
read as follows:
19. For school funding purposes, the Commissioner of 
Education shall determine district of residence as follows:
   a. The (1) In the case of a child placed in a resource family 
   home prior to the effective date of P.L., c. (C.) (pending 
   before the Legislature as this bill), the district of residence [for 
   children in resource family homes] shall be the district in which the 
   resource family parents reside. If such a child in a resource family 
   home is subsequently placed in a State facility or by a State agency, 
   the district of residence of the child shall then be determined as if 
   no such resource family placement had occurred.
   (2) In the case of a child placed in a resource family home on or 
after the effective date of P.L., c. (C.) (pending before the 
Legislature as this bill), the district of residence shall be the present 
district of residence of the parent or guardian with whom the child 
lived prior to the most recent placement in a resource family home.
   b. The district of residence for children who are in residential 
State facilities, or who have been placed by State agencies in group 
homes, skill development homes, private schools or out-of-State 
facilities, shall be the present district of residence of the parent or 
guardian with whom the child lived prior to his most recent 
admission to a State facility or most recent placement by a State 
agency.
   [If this cannot be determined, the district of residence shall be 
the district in which the child resided prior to such admission or 
placement.]
   c. The district of residence for children whose parent or 
guardian temporarily moves from one school district to another as 
the result of being homeless shall be the district in which the parent 
or guardian last resided prior to becoming homeless. For the 
purpose of this amendatory and supplementary act, "homeless" shall 
mean an individual who temporarily lacks a fixed, regular and 
adequate residence.
   d. If the district of residence cannot be determined according to 
the criteria contained herein, or if the criteria contained herein

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is 
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.
Matter enclosed in superscript numerals has been adopted as follows:
1Assembly AHU committee amendments adopted March 11, 2010.
2Assembly AAP committee amendments adopted March 18, 2010.
3Senate SBA committee amendments adopted May 27, 2010.
identify a district of residence outside of the State, the State shall assume fiscal responsibility for the tuition of the child. The tuition shall equal the approved per pupil cost established pursuant to section 24 of P.L.1996, c.138 [(C.18A:7F-1 et al.)] (C.18A:7F-24). This amount shall be appropriated in the same manner as other State aid under this act. The Department of Education shall pay the amount to the Department of Human Services, the Department of Children and Families, the Department of Corrections or the Juvenile Justice Commission established pursuant to section 2 of P.L.1995, c.284 (C.52:17B-170) or, in the case of a homeless child or a child in a family resource home, the Department of Education shall pay to the school district in which the child is enrolled the weighted base per pupil amount calculated pursuant to section 7 of P.L.2007, c.260 (C.18A:7F-49) and the appropriate security categorical aid per pupil and special education categorical aid per pupil.

e. If the State has assumed fiscal responsibility for the tuition of a child in a private educational facility approved by the Department of Education to serve children who are classified as needing special education services, the department shall pay to the Department of Human Services, the Department of Children and Families or the Juvenile Justice Commission, as appropriate, the aid specified in subsection d. of this section and in addition, such aid as required to make the total amount of aid equal to the actual cost of the tuition.

(cf: P.L.2007, c.260, s.27)

2. Section 26 of P.L.1951, c.138 (C.30:4C-26) is amended to read as follows:

26. a. Whenever the circumstances of a child are such that his needs cannot be adequately met in his own home, the division may effect his placement in a resource family home, with or without payment of board, in a group home, or in an appropriate institution if such care is deemed essential for him. The division shall make every reasonable effort to select a resource family home, a group home or an institution of the same religious faith as the parent or parents of such child.

b. Whenever the division [shall place] places any child, as provided by this section, in any municipality and county of this State, the child shall be deemed a resident of such municipality and county for all purposes except school funding, and he shall be entitled to the use and benefit of all health, recreational, vocational and other facilities of such municipality and county in the same manner and extent as any other child living in such municipality and county.

c. Whenever the division shall place any child, as provided by this section, in any school district, the child shall be entitled to the educational benefits of [such] the district determined pursuant to
section 3 of P.L. , c. (C. )(pending before the Legislature as this
bill); provided, however, that the district of residence, as
determined by the Commissioner of Education pursuant to law,
shall be responsible for paying, as applicable, tuition and
transportation costs for such child to the district in which he is
placed.

d. No municipality shall enact a planning or zoning ordinance
governing the use of land by, or for, single family dwellings which
shall, by any of its terms or provisions or by any rule or regulation
adopted in accordance therewith, discriminate between children
who are members of such single families by reason of their
relationship by blood, marriage or adoption, children placed with
such families in such dwellings by the division or other entity
designated by the Commissioner of Children and Families, and
children placed pursuant to law with families in single family
dwellings known as group homes.

Any planning or zoning ordinance, heretofore or hereafter
enacted by a municipality, which violates the provisions of this
section, shall be invalid and inoperative.
(cf: P.L.2006, c.47, s.130)

3. (New section) a. Whenever the Division of Youth and
Family Services in the Department of Children and Families places
any child in a resource family home, including a change in a
placement following the initial placement, there shall be a
presumption that the child shall remain in the school currently
attended by the child and the child shall remain in that school,
pending a best interest determination as set forth in subsection c. of
this section, unless the division determines that the circumstances
provided in subsection b. of this section are present.

b. If the division determines\(^1\), based on a preponderance of
the evidence,\(^1\) that remaining in the present school is not in the
best interest of the child upon consideration of the best interest
factors listed in subsection e.\(^1\) of this section, and would
present significant safety concerns or otherwise be a significant and
immediate detriment to the child, the child may be immediately
enrolled in the school district in which the resource family home is
located. \(^1\)If the division enrolls the child in the school district in
which the resource family home is located, pursuant to this
subsection, the division shall, within \(^2\)three\(^2\) two\(^2\) business days
of taking such action,\(^2\) notify provide notice to\(^2\) the child’s law
 guardian and \(^2\) at the discretion of the division,\(^2\) a parent or
legal guardian, of the new school placement and the basis for such
action. \(^2\)If the division determines there exists a credible safety
issue for the child if the location of the school in the resource
family’s district is disclosed to the parent or legal guardian, the
division shall not include the location of that school or other
information about the identity of the school in the notice to the
parent or legal guardian.3

[No later than three days after the child has been removed from
the present school, the division shall make application to the court
as provided in subsection d. of this section.]1

c. [Within one week] Except as provided in subsection b. of
this section, within five business days4 of placement in a resource
family home, the division shall [determine] make a
preliminary determination5, upon consideration of the best
interest factors listed in subsection [c.] ¶4 of this section, whether
the presumption that the child continue to attend the school that the
child currently attends is outweighed by the best interest factors
supporting placement in the school district in which the resource
family home is located.

In making [that] any preliminary] determination, the
division shall make reasonable efforts to consult with a parent or
guardian of the child, the child’s law guardian, a
representative from the school the child attended at the time of
removal, and any school district under consideration for placement.

[If the division determines that the child should attend the school
district in which the resource family home is located, the division
shall make an application to the court for an order changing the
child’s school district placement as provided in subsection d. of this
section, unless the division obtains the consent of the child’s parent
or guardian and the child.]1

d. [At any time during placement in a resource family home,
the division, the child, or a parent or guardian of the child may
make an application to the court before whom the division’s
complaint for custody or guardianship is pending, for an order
changing the child’s school district placement. The court shall
make its determination as soon as possible, but no later than 21
days after the application is made. The court shall consider only
material and relevant evidence and shall grant the application upon
a showing by the petitioner, at a summary hearing, that the change
in school district placement is in the child’s best interest.

Any party who makes an application pursuant to this section
shall provide notice to all parties in interest] 2If the division’s
determination, pursuant to subsection c. of this section, is that it is
in the best interest of the child to enroll the child in the school
district in which the resource family home is located, the
determination shall remain preliminary pending the completion of
the requirements of this subsection. If the division’s determination
is consistent with the presumption established pursuant to
subsection a. of this section, the determination shall be deemed
conclusive at the time the determination is made.2
(1)  If the division's preliminary determination is that it is in
the best interest of the child to enroll the child in the school district
in which the resource family home is located, the division shall immediately transmit a written notice to the child's law guardian and a parent or legal guardian of the child: (a) advising of the preliminary determination; (b) providing the basis for the preliminary determination; and (c) that the preliminary determination shall be deemed conclusive if the division does not receive notice that an application pursuant to this subsection has been made with the court by the date indicated on the notice, which date shall be five business days from the date the notice is transmitted by the division:

The notice shall inform the parties that an application may be filed with the court, within five business days of the postmark date of the notice, seeking review of the preliminary determination, the reasons for the preliminary determination, and that the preliminary determination shall be deemed conclusive and shall be implemented if the division does not receive timely notice that an application for review has been made to the court within the prescribed time.

The child shall remain enrolled in his current school at least until the time allotted to seek a court review of the preliminary determination is exhausted.

(2)  Within five business days of the postmark date of the division's notice, the child's law guardian or a parent or legal guardian of the child may make an application with the court seeking a review of whether the division's preliminary determination is in the best interest of the child upon consideration of the best interest factors listed in subsection f. of this section. The provisions of this paragraph shall not apply if the division obtains the consent of the child's law guardian, on behalf of the child, and the parent or legal guardian of the child agrees, in writing, to waive the opportunity for a court review of the preliminary determination pursuant to this subsection, in which case the determination becomes conclusive.

Any party who makes an application for court review of the preliminary determination pursuant to this subsection shall provide simultaneous notice to the division and all other parties involved in the division's complaint for custody and guardianship. The court shall hear and decide such application in an expedited manner. In any such proceedings, the division shall bear the burden of proof, based on a preponderance of the evidence, that its determination to...
enroll the child in the school district in which the resource family home is located is in the best interest of the child. If a party makes an application for court review of the division's preliminary determination pursuant to this subsection, the child shall continue to attend his current school while the court hears and decides the application.

(3) If the division does not receive timely notice pursuant to paragraph (2) of this subsection that an application has been made for court review within five business days of the transmittal date of the notice of the preliminary determination, the preliminary determination shall be deemed conclusive and the division shall implement its determination as provided in subsection g. of this section.

(e) (1) At any time during placement of a child in a resource family home, the court may, upon application by any party to the division's complaint for custody or guardianship, review the child's school placement upon consideration of the best interest factors listed in subsection f. of this section, and make appropriate orders regarding school placement.

(2) At any time during placement in a resource family home, the division may reconsider the child's school placement and make a new preliminary determination in accordance with subsections b. or c. and d. of this section, upon consideration of the best interest factors listed in subsection f. of this section.

The factors the division and the court shall consider in making a best interest determination, as provided in this section, shall include, but not be limited to:

(1) safety considerations;
(2) the proximity of the resource family home to the child's present school;
(3) the age and grade level of the child as it relates to the other best interest factors listed in this subsection;
(4) the needs of the child, including social adjustment and wellbeing;
(5) the child's preference;
(6) the child's performance, continuity of education, and engagement in the school the child presently attends;
(7) the child's special education programming if the child is classified;
(8) the point of time in the school year;
(9) the child's permanency goal and the likelihood of reunification, the anticipated duration of the current placement; and
(10) the anticipated duration of the current placement; and
(11)\(^1\) such other factors as provided by regulation of the Commissioner of Children and Families.

\(^{1f.}\) Whenever a determination is made by the division or the court pursuant to this section that the child will change the school district he is attending, the child shall be enrolled in the new school district within three school days.

\(^{g.}\) At the time a \(^{2}\) [preliminary] \(^2\) determination becomes conclusive or upon any subsequent decision by the court, the child shall either continue to be enrolled in his current school or shall be immediately enrolled in the new school district\(^4\), and the mandated student record shall be provided to the new school district in accordance with applicable regulations of the State Board of Education.

\(^{h.}\) The division shall provide transportation for the child to attend school during the time that a determination is being made or while a court review is pending\(^2\) as to where the child will attend school and for the subsequent five school days. At such time as a determination is made by the division or \(^{2}\) a decision is rendered by\(^2\) the court, the division shall immediately notify the school district where the child is currently attending school, the school district of residence, and the school district where the resource family home is located, as applicable.

The district of residence shall be responsible for transportation for the child to attend school, within five days of being notified by the division where the child will attend school.

\(^{i.}\) Nothing in this section shall be construed to require any public entity to fund students placed in nonpublic schools by their parents or guardians.

\(^{j.}\) Notwithstanding the provisions of this section, the division shall not be required to identify the school where the child is or will be enrolled to a parent or legal guardian, if the release of such information would pose a risk to the safety of the child\(^2\).

4. (New section) Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of Education shall adopt, immediately upon filing with the Office of Administrative Law, such regulations as the commissioner deems necessary to implement the provisions of this act which regulations shall be effective for a period not to exceed six months and shall, thereafter, be amended, adopted, or readopted by the commissioner in accordance with the requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

5. The Commissioner of Children and Families may adopt rules and regulations pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of this act.
6. This act shall take effect 'on March 1, 2010' immediately and shall apply to resource family home placements made on or after 'that the effective' date.