

ASSEMBLY, No. 1852

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

By Assemblymen KELLY and O'TOOLE

1 AN ACT concerning the establishment of residency for the purpose of
2 a public education, amending N.J.S.18A:38-1, and supplementing
3 chapters 38 of Title 18A and 12 of Title 3B of the New Jersey
4 Statutes.

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

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9 1. 18A:38-1 is amended to read as follows:

10 18A:38-1. As used in this section, "guardian" means a person who
11 has been appointed the guardian of the person of a minor pursuant to
12 an order issued by a court of competent jurisdiction.

13 Public schools shall be free to the following persons over five and
14 under 20 years of age:

15 a. Any person who is domiciled within the school district;

16 b. (1) Any person who is kept in the home of another person
17 domiciled within the school district and is supported by such other
18 person gratis as if he were such other person's own child, upon filing
19 by such other person with the secretary of the board of education of
20 the district, if so required by the board, a sworn statement that he is
21 domiciled within the district and is supporting the child gratis and will
22 assume all personal obligations for the child relative to school
23 requirements and that he intends so to keep and support the child
24 gratuitously for a longer time than merely through the school term,
25 and a copy of his lease if a tenant, or a sworn statement by his landlord
26 acknowledging his tenancy if residing as a tenant without a written
27 lease, and upon filing by the child's parent or guardian with the
28 secretary of the board of education a sworn statement that he is not
29 capable of supporting or providing care for the child due to a family
30 or economic hardship and that the child is not residing with the
31 resident of the district solely for the purpose of receiving a free public
32 education within the district. The statement shall be accompanied by
33 documentation to support the validity of the sworn statements,
34 information from or about which shall be supplied only to the board

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

Matter underlined thus is new matter.

1 and only to the extent that it directly pertains to the support or
2 nonsupport of the child. If in the judgment of the board of education
3 the evidence does not support the validity of the claim by the resident,
4 the board may deny admission to the child. The resident may contest
5 the board's decision to the commissioner within 21 days of the date of
6 the decision and shall be entitled to an expedited hearing before the
7 commissioner on the validity of the claim and shall have the burden of
8 proof by a preponderance of the evidence that the child is eligible for
9 a free education under the criteria listed in this subsection. The board
10 of education shall, at the time of its decision, notify the resident in
11 writing of his right to contest the board's decision to the commissioner
12 within 21 days. No child shall be denied admission during the
13 pendency of the proceedings before the commissioner. In the event
14 the child is currently enrolled in the district, the student shall not be
15 removed from school during the 21-day period in which the resident
16 may contest the board's decision nor during the pendency of the
17 proceedings before the commissioner. If in the judgment of the
18 commissioner the evidence does not support the claim of the resident,
19 he shall assess the resident tuition for the student prorated to the time
20 of the student's ineligible attendance in the school district. Tuition shall
21 be computed on the basis of 1/180 of the total annual per pupil cost to
22 the local district multiplied by the number of days of ineligible
23 attendance and shall be collected in the manner in which orders of the
24 commissioner are enforced. Nothing shall preclude a board from
25 collecting tuition from the resident, parent or guardian for a student's
26 period of ineligible attendance in the schools of the district where the
27 issue is not appealed to the commissioner;

28 (2) Any person whose parent or guardian is domiciled within the
29 school district;

30 If the superintendent or administrative principal of a school district
31 finds that the parent or guardian of a child who has applied for
32 admission to or is attending the schools of the district is not domiciled
33 within the district [and the child is not kept in the home of another
34 person domiciled within the school district and supported by him gratis
35 as if the child was the person's own child as provided for in paragraph
36 (1) of this subsection], the superintendent or administrative principal
37 may apply to the board of education to deny admission to the child or
38 for the removal of the child. The parent or guardian shall be entitled
39 to a hearing before the board and if in the judgment of the board the
40 parent or guardian is not domiciled within the district [or the child is
41 not kept in the home of another person domiciled within the school
42 district and supported by them gratis as if the child was the person's
43 own child as provided for in paragraph (1) of this subsection], the
44 board may deny admission to the child or order the transfer or removal
45 of the child from school. The parent or guardian may contest the
46 board's decision before the commissioner within 21 days of the date of

1 the decision and shall be entitled to an expedited hearing before the
2 commissioner and shall have the burden of proof by a preponderance
3 of the evidence that the child is eligible for a free education under the
4 criteria listed in this subsection. The board of education shall, at the
5 time of its decision, notify the parent or guardian in writing of his right
6 to contest the decision within 21 days. No child shall be denied
7 admission during the pendency of the proceedings before the
8 commissioner and no child shall be removed from school during the
9 21-day period in which the parent or guardian may contest the board's
10 decision or during the pendency of the proceedings before the
11 commissioner. If in the judgment of the commissioner the evidence
12 does not support the claim of the parent or guardian, the commissioner
13 shall assess the parent or guardian tuition for the student prorated to
14 the time of the student's ineligible attendance in the schools of the
15 district. Tuition shall be computed on the basis of 1/180 of the total
16 annual per pupil cost to the local district multiplied by the number of
17 days of ineligible attendance and shall be collected in the manner in
18 which orders of the commissioner are enforced. Nothing shall
19 preclude a board from collecting tuition from the parent or guardian
20 for a student's period of ineligible attendance in the schools of the
21 district where the issue is not appealed to the commissioner;

22 The provisions of this section requiring [proof of support, custody
23 or tenancy] domicile within the school district shall not apply to a
24 person keeping a child in his home whose parent or guardian is a
25 member of the New Jersey National Guard or a member of the reserve
26 component of the armed forces of the United States and who has been
27 ordered into active military service in any of the armed forces of the
28 United States in time of war or national emergency. In such a
29 situation, the child shall be eligible to enroll in the district in which he
30 is being kept, and no tuition shall be charged by the district.
31 Following the return of the child's parent or guardian from active
32 military service, the child's eligibility for enrollment without tuition in
33 the district in which he or she is being kept shall cease at the end of
34 the current school year;

35 c. [Any person who fraudulently allows a child of another person
36 to use his residence and is not the primary financial supporter of that
37 child and any person who fraudulently claims to have given up custody
38 of his child to a person in another district commits a disorderly persons
39 offense;] (Deleted by amendment, P.L. , c.).

40 d. [Any person whose parent or guardian, even though not
41 domiciled within the district, is residing temporarily therein, but any
42 person who has had or shall have his all-year-round dwelling place
43 within the district for one year or longer shall be deemed to be
44 domiciled within the district for the purposes of this section;] (Deleted
45 by amendment, P.L. , c.).

46 e. Any person for whom the Division of Youth and Family Services

1 in the Department of Human Services is acting as guardian and who
2 is placed in the district by said bureau;

3 f. Any person whose parent or guardian moves from one school
4 district to another school district as a result of being homeless and
5 whose district of residence is determined pursuant to section 19 of
6 P.L.1979, c.207 (C.18A:7B-12).
7 (cf: P.L.1994, c.169, s.1)

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9 2. (New section) Any person who fraudulently allows a child of
10 another person to use his residence in order to enable the child to
11 receive a free education and any person who fraudulently claims to
12 have given up or assumed legal custody of a child for the purpose of
13 allowing the child to receive a free education commits a crime of the
14 fourth degree.

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16 3. (New section) Each court order for guardianship of the person
17 of a minor shall not be issued without a finding that the applicant
18 guardian is not seeking to assume guardianship of the person of the
19 minor for the purpose of enabling the minor to receive a free education
20 pursuant to the provisions of N.J.S.18A:38-1.

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22 4. This act shall take effect immediately.

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STATEMENT

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27 This bill revises current law concerning the right to a free public
28 education. Under the bill's provisions, in order to be eligible for a free
29 education, a child or his parent or guardian would have to be
30 domiciled within the school district. The bill eliminates the provision
31 of current law which authorizes a free education for a child who is
32 kept in the home of another person domiciled within the school district
33 and supported by such other person gratis. The bill defines guardian
34 as a person who has been appointed the guardian of the person of a
35 minor pursuant to an order issued by a court of competent jurisdiction.

36 The bill further provides that any person who fraudulently allows
37 a child of another person to use his residence in order to enable the
38 child to receive a free education and any person who fraudulently
39 claims to have given up or assumed legal custody of a child for the
40 purpose of allowing the child to receive a free education commits a
41 crime of the fourth degree. In addition, the bill stipulates that each
42 court order for guardianship of the person of a minor shall not be
43 issued without a finding that the applicant guardian is not seeking to
44 assume guardianship for the purposes of securing a free education for
45 the child.

46 The bill modifies but retains the current provisions of law which

1 allow a superintendent or administrative principal to challenge the
2 domicile of a student who applies to or is enrolled in the schools of the
3 district; retains the procedure for a parent or guardian to appeal a
4 board of education's decision in this regard before the Commissioner
5 of Education; and retains the authority of the commissioner to assess
6 the parent or guardian tuition for the time of a student's ineligible
7 attendance in the schools of the district. The bill also retains the
8 current provision of law which authorizes a free education for a child
9 whose parent or guardian is a member of the New Jersey National
10 Guard or a member of the reserve component of the armed forces of
11 the United States and who is being kept in another person's home
12 during a period in which his parent or guardian has been called into
13 active military service.

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18 Revises law concerning the establishment of residency for the purpose
19 of a free public education.