

\_\_\_\_\_ Monitored

\_\_\_\_\_ Mandated

  X   Other Reasons

Policy

Adopted: (updated) 12/14/2016

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### NONRESIDENTS / SCHOOL CHOICE PROGRAM

The board shall operate the schools of this district for the benefit of all children resident in the district and such others as may be admitted, pursuant to statute and policy of the board. The board reserves the right to verify the residency of any pupil and the validity of any affidavit of guardianship. Documentation required to prove eligibility to attend the schools of this district shall be in accord with policy 5111 Admission and the administrative code.

Future Residents A child otherwise eligible for attendance whose parent/guardian has signed a contract to buy, build or rent a residence in this district and is enrolled before October 1<sup>st</sup> shall attend without the payment of tuition until December 1<sup>st</sup>. If the child has not become a resident of the district by the end of the period of free attendance, tuition shall be required for the remainder of the time until residency is established. Only one period of free attendance is allowed per child.

Parents/guardians of children who are future residents shall be required to demonstrate proof of the anticipated residency. The board reserves the right to verify such claims, and to remove from school a nonresident pupil whose claim cannot be verified.

#### Former Residents

Regularly enrolled children whose parents/guardians have moved out of the school district during the final marking period shall be permitted to finish the school year without payment of tuition. Regularly enrolled children whose parents/guardians move from the district at any other time during the school year may remain enrolled for the remainder of the school year on payment of tuition prorated.

#### Children of Nonresident Staff Members

Children of nonresident employees of the board, not affiliated with any collective bargaining unit, may be enrolled in the schools of this district on payment of tuition and in accordance with policy for other nonresident pupils.

#### Foreign Exchange Students

The board may admit foreign exchange students into district schools in order to promote cultural awareness and understanding among students.

The board may accept exchange students on a J-1 visa who reside within the district as participants in group-sponsored exchange programs approved by the board. Tuition may be waived for students

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on a J-1 visa.

The board may accept privately sponsored exchange students on an F-1 visa for attendance only in secondary schools upon payment of tuition at the established district rate. Tuition cannot be waived for students on an F-1 visa, and attendance in district schools shall not exceed 12 months. Students attending the schools of this district on an F-1 visa may not participate in any adult-education programs sponsored by the board under any circumstances.

All potential organizations or individuals applying for admission shall forward the request to the chief school administrator by July 1, preceding the school year of attendance. Foreign exchange students shall comply with all immunization requirements for students of this district. The chief school administrator shall be responsible for determining the visa status and eligibility of foreign exchange students applying for admission.

Other Nonresident Pupils

Other nonresident pupils may be admitted to this district on payment of tuition and availability of space.

The chief school administrator shall develop procedures for the enrollment of nonresident children that allow admission of such children only on the proper application of parent/guardian; verify claims of residency and submission of affidavits of guardianship; deny admission where the educational program maintained for the children of this district is inadequate to meet the needs of the applicant; do not exclude any child, otherwise eligible, on the basis of such child's race, color, creed, national origin, affectional or sexual orientation, atypical hereditary cellular or blood trait of any individual or ancestry; and make continued enrollment of any nonresident pupil contingent upon maintaining good standards of citizenship and discipline.

When a child must either relocate to or from this district because his/her parent/guardian is a member of the New Jersey National Guard or a member of the reserve component of the armed forces of the United States and has been ordered into active service, the child shall be eligible to attend the schools of this district without paying tuition. The district shall not be responsible for transporting the child.

The chief school administrator or his/her designee shall recommend to the board for its approval the admission of qualified applicants.

The board shall not be responsible for the transportation to or from school of any nonresident pupils, except as may be required by state or federal law.

The board shall annually determine tuition rates for nonresident pupils.

Legal References: Use legal reference sheet.

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Cross References: List your appropriate policies. See legal reference sheet for possibilities.

Key Words

Nonresidents, Tuition Pupil, Affidavit Pupil, Homeless Pupil

NONRESIDENTS**Other Reasons:**

This can be a topic of critical concern to the district. Students attending the district schools illegally can impact on many aspects of district operations.

N.J.A.C. 6A:17-1.1 et seq. outlines procedures to ensure that homeless children and students placed in state facilities receive a thorough and efficient education. Under federal regulations (42 U.S.C. § 11432) the local educational agency will designate a liaison for homeless children and youths (designated under paragraph (1)(J)(ii)). *Note: NJSBA can provide a description of the job duties of the designated person.*

N.J.A.C. 6A:22-2.1 directs boards of education to construe eligibility to attend district schools liberally to ensure student rights to a free public education.

The federal No Child Left Behind law has further requirements to prevent homeless students from being denied admission to district schools, stigmatized or segregated in any way from the general school population. (See file code 5111 Admission).

**Recommendation:**

A policy setting out any limitations on attendance by nonresident pupils. Cross reference to file code 5111 Admission.

If the district allows a grace period for attendance without payment of tuition for pupils entering and exiting the system, it should be addressed here. Admission of foreign exchange students may also be included here.

Because it is a term or condition of employment, allowing nonresident staff members to send their children to district schools for anything less than full tuition should be negotiated.

“Choice districts” as described in N.J.S.A. 18A:36B-1 et seq. should include assurances that they have complied with all requirements of code and statute.

SCHOOL CHOICE PROGRAM

The Estell Manor School District shall admit choice students on a space available basis.

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The board of education shall not prevent or discourage students from participating in the school choice program who meet the criteria as detailed in the district's application for participation in the choice program. The district may establish reasonable criteria to evaluate prospective choice students, including:

- A. The student's interest in the program offered;
- B. All criteria outlined in the board of education's application for choice program participation.

The district may not impose admission criteria upon prospective choice program students other than those used to determine admission of the residents of this district. No applicant to become a choice student of this district shall be discriminated against on the basis of intellectual or athletic ability, measures of achievement or aptitude, status as a student with disabilities, proficiency in the English language, or any other basis prohibited by State or Federal law. This district shall not prohibit the enrollment of a student based upon a determination that the additional cost of educating the student would exceed the amount of additional State aid received as a result of the student's enrollment.

All students enrolled in the choice program shall not be required to reapply and shall be guaranteed enrollment in the district through all the grades offered by the district. The student shall be permitted to transfer back to a school of the sending district or may apply to a different choice district during the next application period.

Preferences for Enrollment

- A. Enrollment may be prioritized for:
  - A. Students with siblings in the district (including students applying for kindergarten);
  - B. Choice students who have completed the terminal grade of the sending district; or
  - C. Resident students of the Choice district who moved out of the district and want to remain in the choice district the following year.

Students granted preference may be put ahead of Tier 1 applicants and need not be entered into a lottery with Tier 1 applicants. If the number of preference applicants exceeds the spaces available a lottery shall be held for the preference applicants.

- B. The district shall prioritize all Tier 1 applicants for the spaces available in the School Choice program.

A Tier 1 student shall be enrolled in a NJ public school in his or her resident school district for the entire year immediately preceding enrollment in the Choice Program. If applying for kindergarten, a student must be attending his or her resident district's public preschool or, if that district does not offer preschool, have a sibling currently attending the Choice Program to be considered Tier 1.

Only if space remains after all Tier 1 applications have been accepted in the choice program the

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district shall accept Tier 2 students. Tier 2 students include New Jersey residents who have not attended their resident public school for the entire year immediately prior to enrollment in the desired choice district and do not otherwise meet the requirements for Tier 1. If the number of Tier 2 applications exceeds the number of remaining choice seats available, a lottery shall be conducted to select students.

**NOTE: not all Choice districts accept applications from Tier 2 students. Contact the desired Choice districts to find out if they will accept applications from Tier 2 students.**

Special Education Students

An application for enrollment of a student who has been classified as eligible for special education services pursuant to N.J.S.A. 18A:46 may be rejected:

- A. If the student's individualized education program can not be implemented in this district; or
- B. If the enrollment of that student would require the district to fundamentally alter the nature of its educational program; or
- C. If the enrollment of that student would create an undue financial or administrative burden on the district.

A student whose application is rejected by the district shall be provided with a reason for the rejection in the letter of notice. The appeal of a rejection notice may be made to the commissioner, through the Bureau of Controversies and Disputes.

If the student is determined to need special education services after acceptance but prior to the start of the first school year in the district and the district cannot implement the individualized education program (IEP) as, acceptance into the choice program can be revoked.

Once the applicant has been enrolled and started the first year in the choice program, the district is required to keep the student and ensure that the student's needs for special education services are met, just the same as it would for a resident student. Once the student has enrolled, and an IEP is developed that cannot be implemented by the district, the district must follow the normal IEP process for out-of-district placement (see board policy 6171.4 Special Education and law: N.J.A.C. 6A:14-2.7 for due process hearings, N.J.A.C. 6A:14-3.7 for IEP process and N.J.A.C. 6A:14-4.3 for program options).

Application

The district shall adhere to the notification, application, and reporting deadlines established annually by the NJDOE and found at <http://www.state.nj.us/education/choice/apptimes.htm>. The following steps shall be implemented for notifications, applications and report submissions:

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- A. The student's parent or legal guardian must submit the Notice of Intent to Participate in a School Choice Program to the chief school administrator of their resident district no later than the deadline established by the NJDOE);
- B. The resident district shall notify the parent/guardian no later than the deadline established by the NJDOE confirming or denying the students eligibility to participate in the School Choice Program. Students may be denied eligibility if the board has resolved and the Commissioner has approved a limit on the number of students who may leave the district to enroll in a school choice program. Students shall be confirmed on a first come first serve basis;
- C. The student's parent or legal guardian must submit the application for the choice program no later than application deadline established by the NJDOE;
- D. The Estell Manor School district shall notify the parent or legal guardian in writing no later than deadline established by the NJDOE, whether the application for participation in the choice program has been conditionally accepted or rejected. If an application is rejected, the district shall state the reason for rejection in the notification and shall provide applicable information regarding the student's position on the waiting list;
- E. The parent or legal guardian shall then provide written notification to this district no later than deadline established by the NJDOE whether the student applicant intends to enroll in the choice program. This notification shall be binding;
- F. In the event that parent/guardian is notified that the application has been accepted, but the parent/guardian fails to provide the written binding notice of intent to enroll, the Estell Manor School district shall accept applicants from the waiting list. The district shall notify the parent or legal guardian from the waiting list that the student(s) is accepted no later than deadline established by the NJDOE;
- G. The Estell Manor School district shall notify the sending districts in writing of each student's enrollment within 10 days of the student's notification of the intention to attend this choice program.

Unfunded School Choice Students

The district may enroll students for all approved seats available in accordance with the approved district application for the School Choice Program and board policy after the application deadline and the enrollment data has been sent to the NJDOE. However, when a student is enrolled after the enrollment data submission deadline (from the waiting list or from a late application) the student shall be an unfunded choice student in the subsequent school year. The unfunded student's enrollment will be automatically converted to a funded choice student the following year if he/she remains in the choice program.

An application for the Choice Program may be accepted late and the student enrolled during the ongoing school year, for resident students who move out of the district and wish to complete the year or continue as a Choice Program student. In such a case the district will obtain a deadline waiver

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from the Commissioner. The student shall be unfunded in the subsequent school year. The unfunded student's enrollment will be automatically converted to a funded choice student the following year if he/she remains in the choice program.

The enrollment data to the NJDOE shall be accurate and reflect the number of accepted applications as well as the actual number of students reporting the intention to enroll. If however, a student defaults and creates a vacancy for a funded space, the district may fill the vacancy and it shall be funded.

The district shall use the waitlist and select students according to the policy and regulations governing the development and use of the waitlist for all available seats and/or vacancies that occur before accepting late applications.

Late applications may be accepted for existing funded spaces, only after the applicants from the waiting list have been contacted and offered the spaces available.

Lottery Selection Process

When there are more applications than space available in the choice program, the district shall hold a public lottery to determine the selection of students for participation in the choice program. The district shall:

- A. Hold a public lottery to determine the selection of students for participation in the choice program;
- B. Notify the parent or guardian of every student who has submitted notice of intent to participate in the choice program of the date and time of the lottery;
- C. Assign a number to each student participating in the lottery and notify the parent or guardian of the number assigned to their child(ren); and
- D. Develop a waiting list based on the lottery.

Students granted preference may be put ahead of Tier 1 applicants and need not be entered into a lottery with Tier 1 applicants. The district shall give preference in the following priority order (district should lose only the priority categories consistent with their Choice agreement):

- A. Students with siblings in the district (including students applying for kindergarten);
- B. Choice students who have completed the terminal grade of the sending district; or
- C. Resident students of the Choice district who moved out of the district and want to remain in the choice district the following year.

If the number of preference applicants exceeds the spaces available a lottery shall be held for the preference applicants. Separate lotteries may be held in priority order as stated above for the

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assignment of seats.

Waiting List

When the number of student application for the choice program exceeds the available space in the choice program a waiting list will be established to be used in the second enrollment cycle.

The list shall be comprised of applicants selected by lottery and listed in the numerical order in which the name was drawn. As space becomes available for participation in the school choice program, students will be contacted in the order in which their name appears on the list. Siblings of existing students shall be offered admission first.

The school waiting list shall expire annually and all waiting applicants subject to reapplication.

**Legal References:** N.J.S.A. 18A:7F-45 Definitions  
N.J.S.A. 18A:11-1 General mandatory powers and duties  
N.J.S.A. 18A:36B-1 et seq. Interdistrict Public School Choice Program Act of  
 1999

N.J.S.A. 18A:38-1 et seq. Attendance at school free of charge

See particularly:

N.J.S.A. 18A:38-2, 38-3, 38-8,  
38-9

N.J.S.A. 18A:46-20 Receiving pupils from outside district;  
 establishment of facilities

N.J.S.A. 18A:54-20 Powers of board (county vocational schools)

N.J.A.C. 6A:12-1.3 et seq. Inter-district Public School Choice

N.J.A.C. 6A:17-1.1 et seq. Students at Risk of Not Receiving a Public

Education

N.J.A.C. 6A:22 Student residency

See particularly:

N.J.A.C. 6A:22-3

N.J.A.C. 6A:22-3.1

N.J.A.C. 6A:23A-19.2 Method of determining the district of residence

N.J.A.C. 6A:23A-19.3 Address submission for determining the district of  
 residence

Illegal Immigrant and Immigration Responsibility Act of 1997, 8 U.S.C. § 1101

Board of Education of the Borough of Englewood Cliffs v. Board of Education

of the

City of Englewood, 132 NJ 327; cert. denied, 510 U.S. 991 (1993); subsequent

listing

333 N.J. Super. (App. Div. 2000)

No Child Left Behind Act of 2001, Pub. L. 107-110, 20 U.S.C.A. 6301 et seq.



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J.A. v. Board of Education of South Orange/Maplewood, 318 N.J. Super. 512 (App.Div 1999)

**Possible**

**Cross References:** 3240 Tuition income  
 \*5111 Admission  
 \*5114 Suspension and expulsion  
 6142.5 Travel and exchange programs  
 \*6151 Class size

\*Indicates policy is included in the Critical Policy Reference Manual.

Notes on the terms “residence” and “domicile.”

These terms are often used interchangeably in education law and regulations, for example “residency or domicile” (N.J.A.C.22-4.1(d)), sometimes with an intensifying adjective (“actual domicile or residence,” same citation). The most important chapter of N.J. Administrative Code on the topic is entitled “Student residency” while the key section concerning “Eligibility to attend school” (Subchapter 3) is titled “Students domiciled within the school district” (N.J.A.C. 6A:22-3.1).

There is a legal adage that “a person can have many residences, but only one domicile.” This distinction of “true, fixed, permanent domicile” versus “temporary residence” (in essence, a legal fiction) is sometimes mentioned but is not consistently maintained in the area of education. The words themselves do not (and inherently cannot) answer the fundamental question: Is a parent or student fraudulently claiming to live at an address in order to obtain tuition-free enrollment?

For additional insights into using the terms “domicile” and “residence” for determining whether a student can attend school in a district, read “Pupil Residency”: Who is Eligible for a Free Public Education?” in N.J. School Leader (July-August 2002) by Donna Kaye, Esq.

Key Words

Choice, School Choice, School Choice Program, Application, Lottery, Waiting List

**Legal References:** N.J.S.A. 18A:7F-45 Definitions  
N.J.S.A. 18A:11-1 General mandatory powers and duties  
N.J.S.A. 18A:36B-1 et seq. Interdistrict Public School Choice Program Act of 1999

See particularly:

N.J.S.A. 18A:36B-20, -21

N.J.S.A. 18A:38-1 et seq. Attendance at school free of charge

See particularly:

N.J.S.A. 18A:38-2, 38-3, 38-8, 38-9

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	<u>N.J.S.A.</u> 18A:46-20	Receiving pupils from outside district; establishment of facilities
	<u>N.J.S.A.</u> 18A:54-20	Powers of board (county vocational schools)
	<u>N.J.A.C.</u> 6A:12-1.3 <u>et seq.</u>	Inter-district Public School Choice
	<u>See Particularly</u>	
	<u>N.J.A.C.</u> 6A:12-4.1, -4.2, -4.3	
Education	<u>N.J.A.C.</u> 6A:17-1.1 <u>et seq.</u>	Students at Risk of Not Receiving a Public
	<u>N.J.A.C.</u> 6A:22	Student residency
	<u>See particularly:</u>	
	<u>N.J.A.C.</u> 6A:22-3	Eligibility to attend school
	<u>N.J.A.C.</u> 6A:22-3.1	Students domiciled within the school district
	<u>N.J.A.C.</u> 6A:23-5.2	Method of determining the district of residence
	<u>N.J.A.C.</u> 6A:23-5.3	Address submission for determining the district of residence
	<u>Illegal Immigrant and Immigration Responsibility Act of 1997, 8 U.S.C. § 1101</u>	
	<u>No Child Left Behind Act of 2001, Pub. L. 107-110, 20 U.S.C.A. 6301 et seq.</u>	

**Possible**

<b><u>Cross References:</u></b>	3240	Tuition income
	*5111	Admission
	*5118	Nonresidents
	*6151	Class size

\*Indicates the policy is included in the Critical Policy Reference Manual.