

[Third Reprint]

ASSEMBLY, No. 2137

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED FEBRUARY 11, 2010

Sponsored by:

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District 7 (Burlington and Camden)

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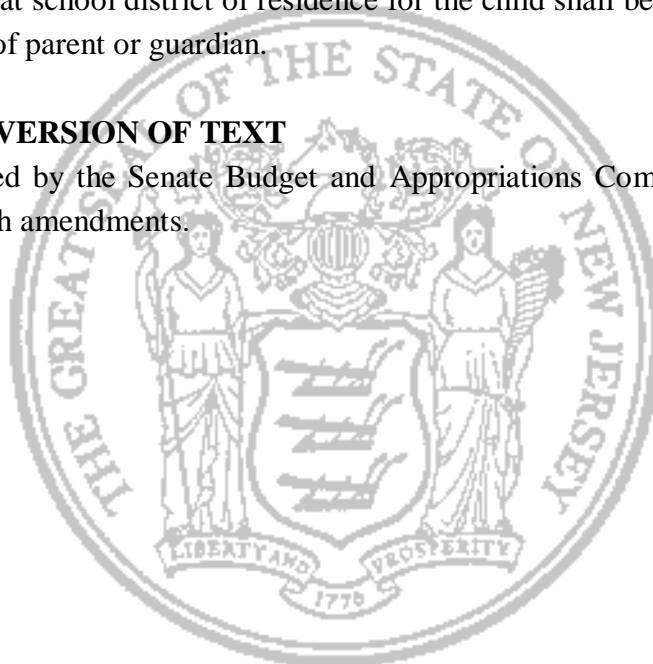
**Assemblyman O'Scanlon, Assemblywoman Casagrande, Senators Vitale,
Ruiz and Beck**

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)

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

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 19 of P.L.1979, c.207 (C.18A:7B-12) is amended to
9 read as follows:

10 19. For school funding purposes, the Commissioner of
11 Education shall determine district of residence as follows:

12 a. **[The]** (1) In the case of a child placed in a resource family
13 home prior to the effective date of P.L. , c. (C.) (pending
14 before the Legislature as this bill), the district of residence **[for**
15 **children in resource family homes]** shall be the district in which the
16 resource family parents reside. If such a child in a resource family
17 home is subsequently placed in a State facility or by a State agency,
18 the district of residence of the child shall then be determined as if
19 no such resource family placement had occurred.

20 (2) In the case of a child placed in a resource family home on or
21 after the effective date of P.L. , c. (C.) (pending before the
22 Legislature as this bill), the district of residence shall be the present
23 district of residence of the parent or guardian with whom the child
24 lived prior to the most recent placement in a resource family home.

25 b. The district of residence for children who are in residential
26 State facilities, or who have been placed by State agencies in group
27 homes, skill development homes, private schools or out-of-State
28 facilities, shall be the present district of residence of the parent or
29 guardian with whom the child lived prior to his most recent
30 admission to a State facility or most recent placement by a State
31 agency.

32 **[If this cannot be determined, the district of residence shall be**
33 **the district in which the child resided prior to such admission or**
34 **placement.]**

35 c. The district of residence for children whose parent or
36 guardian temporarily moves from one school district to another as
37 the result of being homeless shall be the district in which the parent
38 or guardian last resided prior to becoming homeless. For the
39 purpose of this amendatory and supplementary act, "homeless" shall
40 mean an individual who temporarily lacks a fixed, regular and
41 adequate residence.

42 d. If the district of residence cannot be determined according to
43 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.

1 identify a district of residence outside of the State, the State shall
2 assume fiscal responsibility for the tuition of the child. The tuition
3 shall equal the approved per pupil cost established pursuant to
4 section 24 of P.L.1996, c.138 [(C.18A:7F-1 et al.)] (C.18A:7F-24).
5 This amount shall be appropriated in the same manner as other State
6 aid under this act. The Department of Education shall pay the
7 amount to the Department of Human Services, the Department of
8 Children and Families, the Department of Corrections or the
9 Juvenile Justice Commission established pursuant to section 2 of
10 P.L.1995, c.284 (C.52:17B-170) or, in the case of a homeless child
11 or a child in a family resource home, the Department of Education
12 shall pay to the school district in which the child is enrolled the
13 weighted base per pupil amount calculated pursuant to section 7 of
14 P.L.2007, c.260 (C.18A:7F-49) and the appropriate security
15 categorical aid per pupil and special education categorical aid per
16 pupil.

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

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

27

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

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

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

46 c. Whenever the division shall place any child, as provided by
47 this section, in any school district, the child shall be entitled to the
48 educational benefits of **[such]** the district determined pursuant to

1 section 3 of P.L. ,c. (C.)(pending before the Legislature as this
2 bill); provided, however, that the district of residence, as
3 determined by the Commissioner of Education pursuant to law,
4 shall be responsible for paying, as applicable, tuition and
5 transportation costs for such child to the district in which he is
6 placed.

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

17 Any planning or zoning ordinance, heretofore or hereafter
18 enacted by a municipality, which violates the provisions of this
19 section, shall be invalid and inoperative.

20 (cf: P.L.2006, c.47, s.130)

21

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

31 b. If the division determines¹[, based on a preponderance of
32 the evidence,]¹ that remaining in the present school is not in the
33 best interest of the child upon consideration of the best interest
34 factors listed in subsection ¹[e.] f.¹ of this section, and would
35 present significant safety concerns or otherwise be a significant and
36 immediate detriment to the child, the child may be immediately
37 enrolled in the school district in which the resource family home is
38 located. ¹If the division enrolls the child in the school district in
39 which the resource family home is located, pursuant to this
40 subsection, the division shall, within ²[three] two² business days
41 of taking such action, ²[notify] provide notice to² the child's law
42 guardian and ³[, at the discretion of the division,]³ a parent or
43 legal guardian, of the new school placement and the basis for such
44 action. ³If the division determines there exists a credible safety
45 issue for the child if the location of the school in the resource
46 family's district is disclosed to the parent or legal guardian, the
47 division shall not include the location of that school or other

1 information about the identity of the school in the notice to the
2 parent or legal guardian.³

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

6 c. ¹[Within one week] Except as provided in subsection b. of
7 this section, within five business days¹ of placement in a resource
8 family home, the division shall ¹[determine] make a
9 ²[preliminary]² determination¹, upon consideration of the best
10 interest factors listed in subsection ¹[e.] f.¹ of this section, whether
11 the presumption that the child continue to attend the school that the
12 child currently attends is outweighed by the best interest factors
13 supporting placement in the school district in which the resource
14 family home is located.

15 In making ¹[that] ²[any preliminary]¹ that² determination, the
16 division shall make reasonable efforts to consult with a parent or
17 guardian of the child, the child ¹[or] ,¹ the child's law guardian, a
18 representative from the school the child attended at the time of
19 removal, and any school district under consideration for placement.
20 ¹[If the division determines that the child should attend the school
21 district in which the resource family home is located, the division
22 shall make an application to the court for an order changing the
23 child's school district placement as provided in subsection d. of this
24 section, unless the division obtains the consent of the child's parent
25 or guardian and the child.]¹

26 d. ¹[At any time during placement in a resource family home,
27 the division, the child, or a parent or guardian of the child may
28 make an application to the court before whom the division's
29 complaint for custody or guardianship is pending, for an order
30 changing the child's school district placement. The court shall
31 make its determination as soon as possible, but no later than 21
32 days after the application is made. The court shall consider only
33 material and relevant evidence and shall grant the application upon
34 a showing by the petitioner, at a summary hearing, that the change
35 in school district placement is in the child's best interest.

36 Any party who makes an application pursuant to this section
37 shall provide notice to all parties in interest] ²If the division's
38 determination, pursuant to subsection c. of this section, is that it is
39 in the best interest of the child to enroll the child in the school
40 district in which the resource family home is located, the
41 determination shall remain preliminary pending the completion of
42 the requirements of this subsection. If the division's determination
43 is consistent with the presumption established pursuant to
44 subsection a. of this section, the determination shall be deemed
45 conclusive at the time the determination is made.²

1 (1) ²["If the division's preliminary determination is that it is in
2 the best interest of the child to enroll the child in the school district
3 in which the resource family home is located, the] ²The ²division
4 shall immediately ²[send] transmit² a written notice ²to the
5 child's law guardian and a parent or legal guardian of the child: (a)
6 advising² of the preliminary determination ²[to the child's law
7 guardian and a parent or legal guardian of the child] ; (b) providing
8 the basis for the preliminary determination; and (c) that the
9 preliminary determination shall be deemed conclusive if the
10 division does not receive notice that an application pursuant to this
11 subsection has been made with the court by the date indicated on
12 the notice, which date shall be five business days from the date the
13 notice is transmitted by the division².

14 ²["The notice shall inform the parties that an application may be
15 filed with the court, within five business days of the postmark date
16 of the notice, seeking review of the preliminary determination, the
17 reasons for the preliminary determination, and that the preliminary
18 determination shall be deemed conclusive and shall be implemented
19 if the division does not receive timely notice that an application for
20 review has been made to the court within the prescribed time.]"²
21 The child shall remain enrolled in his current school at least until
22 the time allotted to seek a court review of the preliminary
23 determination is exhausted.

24 (2) ²["Within five business days of the postmark date of the
25 division's notice, the child's law guardian or a parent or legal
26 guardian of the child] Any party² may make an application with
27 the court seeking a review of whether the division's preliminary
28 determination is in the best interest of the child upon consideration
29 of the best interest factors listed in subsection f. of this section ²[.
30 The provisions of this paragraph shall not apply if the division
31 obtains the consent of the] within the time allotted by the division
32 as specified in the division's notice, which date shall be five
33 business days from the date the notice is transmitted by the division,
34 unless the² child's law guardian, ²on behalf of the child,² and
35 ²[the] a² parent or legal guardian of the child ²agrees, in writing,
36 to waive the opportunity for a court review of the preliminary
37 determination pursuant to this subsection, in which case the
38 determination becomes conclusive².

39 Any party who makes an application for court review of the
40 preliminary determination pursuant to this subsection shall provide
41 simultaneous notice to the division and all other parties involved in
42 the division's complaint for custody and guardianship. The court
43 shall hear and decide such application in an expedited manner. ²In
44 any such proceedings, the division shall bear the burden of proof,
45 based on a preponderance of the evidence, that its determination to

1 enroll the child in the school district in which the resource family
2 home is located is in the best interest of the child.²

3 If a party makes an application for court review of the division's
4 preliminary determination pursuant to this subsection, the child
5 shall continue to attend his current school while the court hears and
6 decides the application.

7 (3) If the division does not receive timely notice²pursuant to
8 paragraph (2) of this subsection² that an application has been made
9 for court review within five business days of the²[postmark]
10 transmittal² date of the notice of the preliminary determination, the
11 preliminary determination shall be deemed conclusive and the
12 division shall implement its determination as provided in subsection
13 g. of this section.

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

20 (2) At any time during placement in a resource family home, the
21 division may reconsider the child's school placement and make a
22 new²[preliminary]² determination in accordance with
23 [subsection] subsections b. or²c. ²and d. ² of this section, upon
24 consideration of the best interest factors listed in subsection f. of
25 this section¹.

26 ¹[e.] f.¹ The factors the division and the court shall consider
27 in making a best interest determination ¹, as provided in this
28 section,¹ shall include¹, but not be limited to¹:

29 (1) safety considerations;

30 (2) the proximity of the resource family home to the child's
31 present school;

32 (3) the age and grade level of the child as it relates to the other
33 best interest factors listed in this subsection;

34 (4) the needs of the child, including social adjustment and
35 wellbeing;

36 (5) the child's preference;

37 (6) the child's performance, continuity of education, and
38 engagement in the school the child presently attends;

39 (7) the child's special education programming if the child is
40 classified;

41 (8) the point of time in the school year;

42 (9) the child's permanency goal ¹[,] and¹ the likelihood of
43 reunification¹[, the anticipated duration of the current placement;
44 and]¹;

45 (10) ¹the anticipated duration of the current placement; and

1 (11)¹ such other factors as provided by regulation of the
2 Commissioner of Children and Families.

3 ¹[f. Whenever a determination is made by the division or the
4 court pursuant to this section that the child will change the school
5 district he is attending, the child shall be enrolled in the new school
6 district within three school days]

7 g. At the time a ²[preliminary]² determination becomes
8 conclusive or upon any subsequent decision by the court, the child
9 shall either continue to be enrolled in his current school or shall be
10 immediately enrolled in the new school district¹, and the mandated
11 student record shall be provided to the new school district in
12 accordance with applicable regulations of the State Board of
13 Education.

14 ¹[g.] h.¹ The division shall provide transportation for the child
15 to attend school during the time that a determination is being made
16 ²or while a court review is pending² as to where the child will
17 attend school and for the subsequent five school days. At such time
18 as a determination is made by the division or ²a decision is rendered
19 by² the court, the division shall immediately notify the school
20 district where the child is currently attending school, the school
21 district of residence, and the school district where the resource
22 family home is located, as applicable.

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

26 ¹[h.] i.¹ Nothing in this section shall be construed to require
27 any public entity to fund students placed in nonpublic schools by
28 their parents or guardians.

29 ²j. Notwithstanding the provisions of this section, the division
30 shall not be required to identify the school where the child is or will
31 be enrolled to a parent or legal guardian, if the release of such
32 information would pose a risk to the safety of the child.²
33

34 4. (New section) Notwithstanding any provision of P.L.1968,
35 c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of
36 Education shall adopt, immediately upon filing with the Office of
37 Administrative Law, such regulations as the commissioner deems
38 necessary to implement the provisions of this act which regulations
39 shall be effective for a period not to exceed six months and shall,
40 thereafter, be amended, adopted, or readopted by the commissioner
41 in accordance with the requirements of P.L.1968, c.410 (C.52:14B-
42 1 et seq.).
43

44 5. The Commissioner of Children and Families may adopt rules
45 and regulations pursuant to the "Administrative Procedure Act,"
46 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of
47 this act.

A2137 [3R] CONNERS, CONAWAY

9

1 6. This act shall take effect ¹【on March 1, 2010】 immediately¹
2 and shall apply to resource family home placements made on or
3 after ¹【that】 the effective¹ date.