

## CHAPTER 69

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:

C.18A:7B-12 Determination of district of residence.

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

a. (1) In the case of a child placed in a resource family home prior to the effective date of P.L.2010, c.69 (C.30:4C-26b et al.), the district of residence 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.2010, c.69 (C.30:4C-26b et al.), 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.

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 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-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.

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

C.30:4C-26 Placing child in resource family home or institution.

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 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 the district determined pursuant to section 3 of P.L.2010, c.69 (C.30:4C-26b); 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.

C.30:4C-26b Child in resource family home, determination of school placement.

3. 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 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 f. 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. 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 two business days of taking such action, provide notice to the child's law guardian and a parent or legal guardian, of the new school placement and the basis for such action. 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.

c. Except as provided in subsection b. of this section, within five business days of placement in a resource family home, the division shall make a determination, upon consideration of the best interest factors listed in subsection f. 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 determination, the division shall make reasonable efforts to consult with a parent or guardian of the child, 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.

d. If 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.

(1) 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 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) Any party 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 within the time allotted by the division as specified in the division's notice, which date shall be five business days from the date the notice is transmitted by the division, unless the child's law guardian, on behalf of the child, and a 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 determination in accordance with subsection b. or c. and d. of this section, upon consideration of the best interest factors listed in subsection f. of this section.

f. 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;
- (10) the anticipated duration of the current placement; and
- (11) such other factors as provided by regulation of the Commissioner of Children and Families.

g. At the time a 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, 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 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 a decision is rendered by 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.

4. 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 immediately and shall apply to resource family home placements made on or after the effective date.

Approved September 9, 2010.