



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report

Relating to

Tuition Aid Grants

October 7, 2013

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

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Introduction

This project resulted from the New Jersey Supreme Court decision in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 N.J. Super. 389 (2012), in which the Court was asked to construe the provisions of the New Jersey statutes that define who is eligible to receive a Tuition Aid Grant (TAG) outlined in N.J.S. 18A:71B-2. The Court identified an ambiguity in subsection b. of N.J.S. 18A:71B-2, regarding what it means to be a “resident” of this State in the context of a dependent student whose parent or guardian is prevented from establishing, or has not established, a New Jersey residence.

The Court in *A.Z. ex rel. B.Z.*, held that the Legislature had determined that “a student’s legal residence [is] only presumed to be that of his or her parents’ residence,” and that such a presumption can be rebutted.

The plaintiff in *A.Z. ex rel. B.Z.* was a citizen of the United States and had lived in New Jersey since 1997. *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 N.J. Super. 389, 1 (2012). Her mother was an undocumented immigrant from Guatemala who supported plaintiff by herself. *Id.* After graduating from a New Jersey high school in 2011, the plaintiff applied for a Tuition Aid Grant (TAG) to assist her in attending college in New Jersey. *Id.* The plaintiff received notice from the Higher Education Student Assistance Authority (HESAA) notifying her that she was ineligible for tuition assistance because her parents were not legal residents of New Jersey. *Id.* HESAA took the position that, pursuant to N.J.A.C. 9A:9-2.2(a)(1), plaintiff must be domiciled in New Jersey in order to satisfy the statutory residence requirement of N.J.S. 18A:71B-2(b) and that because residence is synonymous with domicile in this context, plaintiff’s domicile is deemed conclusively to be that of her mother’s domicile since she is considered a dependent student. *Id.* at 3. The plaintiff’s mother was not deemed domiciled in New Jersey as a result of her immigration status, and therefore the plaintiff was not deemed to be domiciled in this State either. *Id.* HESAA determined that plaintiff failed to meet the residence-domicile requirement and therefore was ineligible to receive a TAG. *Id.*

The plaintiff appealed and the Appellate Division determined that HESAA’s decision had been based upon a misapplication of law. *Id.* at 1. The Court found that conclusively deeming a dependent student’s domicile to the domicile of his or her parent alters the plain meaning of the statute, and is contrary to the underlying legislative intent. *Id.* at 5.

TAG was created by the State Legislature to pay for as much as the full cost of tuition for students who attend an approved New Jersey college, university or degree-granting proprietary school. The Legislature established the TAG program as, essentially, an entitlement program of tuition assistance for eligible needy students. *Id.* at 2. The amount of money a student may receive is dependent on several factors, including financial need, cost of attendance, and available funding. As long as the student continues to meet all program eligibility requirements, TAG awards may be renewed annually.

The TAG program's statutory residency requirement incorporates the requirements outlined in N.J.S. 18A:71B-20 subsection c.(1) but clarified in N.J.S. 18A:71B-2 subsection b., which apply generally to most State-funded student financial aid programs. For these programs, a person shall not be awarded a State tuition aid grant unless that person is a United States citizen, domiciled within the State, and a resident of the State. *See* N.J.S. 18A:71B-2 subsections a., b., and c. The current issue involves the residency requirement in subsection b. of N.J.S. 18A:71B-2 that provides:

b. A person shall not be awarded financial aid under this chapter unless the person has been a resident of this State for a period of not less than 12 months immediately prior to receiving the financial aid.

Title 9A of the New Jersey Administrative Code gives the HESAA the authority to create and adopt rules and regulations necessary for the proper administration of the TAG program. *See* N.J.A.C. 9A:9-1. Pursuant to N.J.A.C. 9A:9-2.2(a), the residence of a student is defined in terms of domicile, and domicile is defined as “the place where a person has his or her true, fixed, permanent home and principle establishment, and to which, whenever he or she is absent, he or she has the intention of returning.” A dependent student is considered a legal resident of the state in which his or her parents are domiciled. N.J.A.C. 9A:9-2.6. A “dependent student whose parent(s) has not established a domicile in New Jersey shall be considered to be in the State for a temporary purpose of obtaining education and shall be ineligible for State student financial aid.” N.J.A.C. 9A:9-2.2 a.(1) As a result, dependent students whose parents have not established a domicile within the State are disqualified from receiving needed aid for school, even if the student has a true, fixed, permanent home within the State.

The Appellate Division examined the legislative history of the TAG program as well as the residency requirements outlined in N.J.S. 18A:71B-2 subsection b. and determined that irrefutably assigning to a dependent student the domicile of his or her parent alters the plain meaning of the statute, and is contrary to the underlying legislative intent. *A.Z. ex rel. B.Z* at 5.

At the inception of the TAG program, the administrative regulations included language suggesting that there was only a presumption that the parent’s residence determined the child’s legal residence. *Id.* In the 1991 codification of the provision addressing the impact of parents who move out of the state, the Legislature implicitly approved the presumption—only a presumption—that a dependent student’s legal residence was the same as his or her parent’s residence. *Id.* at 6. In 2005, the administrative agency amended the regulations deleting relevant language regarding the presumption.

The Appellate Division, in *A.Z. ex rel. B.Z*, answered the question of what it means to be a “resident” of this State in the context of a dependent student whose parent or guardian is prevented from establishing, or has not established a New Jersey domicile. The HESAA, responsible for administering the funds for student aid, is still controlled by a regulation that alters the terms of the governing statute. As a result, there is potential for the continuous misapplication of the law. If the statute is left unchanged, it could result in further litigation that could potentially be avoided by modifying the statute and proposed draft language is set forth below.

During this Legislative session, there were at least eight bills introduced that pertained to tuition aid grants, many of these were introduced in prior legislative sessions as well. The bills, the descriptions of the bills, and the status of each is as follows:

- A-905 – Established a tuition aid grant pilot program for part-time county college students – introduced by a single sponsor on January 10, 2012, referred to the Assembly Education committee, no reported action since that time;
- A-1849 – Expands the Tuition Aid Grant program to part-time undergraduates – five sponsors, introduced on January 10, 2012, referred to the Assembly Higher Education committee, no reported action since that time;
- A-3162 (rel: S-1760) – “Higher Education Citizenship Equality Act” defines domicile for dependent students for the purpose of eligibility for State student loans, grants, or scholarship and resident tuition – 10 sponsors, introduced on June 21, 2012, referred to the Assembly Higher Education committee, transferred to the Assembly Budget committee, second reading in the Assembly on June 17, 2014;
- A-3509 (rel: S-2479) – Allows certain students including undocumented immigrants who meet certain criteria to qualify for in-State tuition at public institutions of higher education and State financial aid – 18 sponsors, introduced on December 3, 2012, referred to the Assembly Higher Education committee, no reported action since that time;
- See also, A-4225 – “Tuition Equality Act” allows certain students to qualify for in-state tuition rates at public institutions of higher education – 16 sponsors, introduced on June 6, 2013, referred to the Assembly Budget committee, second reading in the Assembly on June 17, 2013, no reported action since that time;
- S-1380 – Expands the Tuition Aid Grant program to part-time undergraduates – one sponsor, introduced January 30, 2012, referred to Senate Higher Education committee, no reported action since that time;
- S-1760 – (see A-3162 above) - “Higher Education Citizenship Equality Act” defines domicile for dependent students for the purpose of eligibility for State student loans, grants, or scholarship and resident tuition – four sponsors, introduced on March 5, 2012, referred to Senate Higher Education committee on March 8, 2013, then to Senate Budget and Appropriations committee on May 14, 2012, no reported action since that time;
- S-2479 – (see A-3509 above) - Allows certain students including undocumented immigrants who meet certain criteria to qualify for in-State tuition at public institutions of higher education and State financial aid – 10 sponsors, introduced January 8, 2013, referred to Senate Higher Education committee January 14, 2013, referred to Senate Budget and Appropriations committee July 29, 2013, no reported action since that time.

The bills most similar to the Commission proposal are as follows:

A-3162 and S-1760 propose a new “Higher Education Citizenship Equality Act”. This Act would consider a student domiciled in New Jersey for the purpose of eligibility for State student loans, grants, or scholarship and resident tuition if the student is a United States citizen, the student has resided in New Jersey for at least 12 consecutive months immediately prior to the

period for which financial assistance is sought, and the student's parent or guardian provides HESAA with documentation that he or she filed a New Jersey and federal income tax (or with evidence of income tax withholding) for the most recent tax year. The student may not establish eligibility if the student's parent or guardian has not lived in New Jersey for 12 consecutive months prior to the academic period for which financial assistance is being sought. The fiscal note associated with the bills indicated that the impact of the bill would involve an "expenditure increase from the General Fund" and "indeterminate revenue loss for the public institutions of higher education".

A-3509 and S-2479 propose modifications to Title 18A, chapter 62 and N.J.S. 18A:71B-2. The bills propose that a student who meets the eligibility requirements included in the proposed statutory language is eligible for in-State tuition and also to apply for and participate in any financial aid program administered by HESAA to the full extent permitted by federal law. A student, even one without lawful immigration status, is exempt from paying non-resident tuition at a public institution of higher education if the student attended high school in New Jersey for three or more years and graduated from high school in New Jersey or received the equivalent of a high school diploma here. For a student without lawful immigration status, the student must also file an affidavit stating that the student has applied, or will do so as soon as the student is eligible to do so, to legalize the student's immigration status and meets the eligibility criteria and has submitted a request for consideration of Department of Homeland Security's deferred action for childhood arrivals process.

A-4225 is similar to A-3509/S-2479, but it is more limited in its requirements and its scope. It proposes that a student, even one without lawful immigration status, is exempt from paying non-resident tuition at a public institution of higher education if the student attended high school in New Jersey for three or more years and graduated from high school in New Jersey or received the equivalent of a high school diploma here. For a student without lawful immigration status, the student must also file an affidavit stating that the student has applied, or will do so as soon as the student is eligible to do so, to legalize the student's immigration status. The fiscal note associated with the bill indicated that the bill would involve "no impact on state revenues or expenditures" and an "indeterminate impact on public institutions of higher education".

The Commission's proposal focuses only on the language of the Court's opinion in *A.Z. ex rel. B.Z.* and, as a result, proposes more limited changes to the statute than the A-3162/S-1760 and A-3509/S-2479.

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18A:71B-2. Student eligibility

a. A student who is enrolled in an eligible institution and who is eligible for and receives any form of student financial aid through a program administered by the State under this chapter shall be considered to remain domiciled in New Jersey and eligible for continued financial assistance notwithstanding the fact that the student is financially dependent upon the student's parents or guardians and that the parents or guardians change their domicile to another State.

b. A person shall not be awarded financial aid under this chapter unless the person has been a resident of this State for a period of not less than 12 months immediately prior to receiving the financial aid. For the purposes of this section only, it shall be a rebuttable presumption that the residence of a dependent student is that of the student's parents or guardians.

c. A person shall not be awarded student financial aid under this chapter unless the person is a United States citizen or eligible noncitizen, as determined under 20 U.S.C.s.1091. The authority shall determine whether persons who were eligible noncitizens prior to the effective date of the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub.L.104-193, but not after that date, shall continue to be eligible for student financial aid under this chapter.

d. A person who is incarcerated shall not be eligible for student financial aid under this chapter.

COMMENT

The revision to *N.J.S. 18A:71B-2* was drafted to reflect the Court's determination in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority* and proposes the codification that there is a rebuttable presumption that a dependent student's legal residence is the same as his or her parent's residence. In *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 *N.J.Super.* 389 (2012), the Court held that conclusively deeming a dependent student to share the domicile of his or her parent alters the plain meaning of the statute. The Court determined that the legislative intent of the statute was that a student's legal residence is only "presumed" to be that of his or her parents' residence, a presumption that can be rebutted with a showing that the dependent student enjoyed a lengthy and continuous residence within the State.