

To: Commission
From: Uche Enwereuzor
Re: State Scholarship and Grants
Date: March 11, 2013

MEMORANDUM

Commission Staff monitors case law in the State to identify decisions in which the court calls for Legislative review or action. This memorandum results from one such case and seeks Commission authorization for a project clarifying the student eligibility requirement provisions pertaining to State Scholarship and Grants outlined in *N.J.S. 18A:71B-2(b)*. Staff wishes to address the ambiguity identified by the Court regarding what it means to be a “resident” of this State in the contest of a dependent student whose primary caregiver is prevented from, or has not, established a New Jersey domicile. The Court in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 N.J.Super. 389, 5 (2012), held that “a student’s legal residence [is] only presumed to be that of his or her parents’ residence,” and such presumption can be rebutted. That case states that the Legislature, in addressing the impact of parents who move out of state, implicitly approved the presumption—but only a presumption—that a dependent student’s legal residence was the same as his or her parent’s residence.

In *A.Z. ex rel. B.Z.*, plaintiff was a citizen of the United States and had lived in New Jersey since 1997. *Id.* at 1. 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 because her parents were not legal residents of New Jersey. *Id.* HESAA argued 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 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. Due to her mother’s immigration status, the plaintiff’s mother was not deemed domiciled in New Jersey and therefore the plaintiff was not either. *Id.* As such, HESAA determined that plaintiff failed to meet the residence-domicile requirement and therefore was ineligible to receive a TAG. *Id.*

The plaintiff appealed the decision of HESAA and the Appellate Division determined that HESAA’s decision was based upon a misapplication of law and an administrative regulation that alters the terms of *N.J.S. 18A:71B-2(b)*. *Id.* at 1. In addition, the Appellate Division determined 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. In fact, such interpretation contravenes decades-old administrative interpretation implicitly approved by the Legislature that suggests that a student’s legal residence was only “presumed” to be that of his or her parents’ residence. *Id.* This presumption could be rebutted with a showing that the plaintiff enjoyed a lengthy and continuous residence within the State. *Id.*

The Tuition Aid Grant is a monetary reward created by the State Legislature pursuant to *N.J.S. 18A:71B-18*. TAG was created 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 received 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. In addition to the school location requirements described by *N.J.S.* 18A:71B-1, the statute conditions eligibility on, among other things, submission of an application in satisfactory form, demonstration of financial need, satisfactory academic progress, and residency. *See N.J.S.* 18A:71B-20.

The TAG program's statutory residency requirement incorporates the requirements outlined in *N.J.S.* 18A:71B-20(c)(1) but clarified in *N.J.S.* 18A:71B-2(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 is a resident of the State. *See N.J.S.* 18A:71B-2(a), (b), and (c). The current issue pertains primarily to the residency requirements in *N.J.S.* 18A:71B-2(b) that provide:

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. As such, HESAA is charged with the responsibility of interpreting *N.J.S.* 18A:71B-2, in conjunction with *N.J.S.* 18A:71B-20, in order to develop, coordinate, and administer policies for the TAG program.

Pursuant to *N.J.A.C.* 9A:9-2.2(a), the residence of a student is defined in terms of domicile. 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.” *Id.* Moreover, a dependent student is considered a legal resident of the state in which his or her parents are domiciled. *See N.J.A.C.* 9A:9-2.6. Despite the dependent student’s residence within the State, *N.J.A.C.* 9A:9-2.2(a)(1) states that 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.” The result is that every dependent student whose parent has not established a domicile within the State, for whatever reason, is disqualified from receiving needed aid for school, even if that 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(b) and determined that irrebuttably 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. The Court explained that the regulation contravenes decades-old administrative interpretation, implicitly approved by the Legislature in subsequent enactments, that a student’s legal residence was only “presumed” to be that of his or her parents’ 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—but only a presumption—that a dependent student’s legal residence was the same as his or her parent’s residence. *Id.* at 6.

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.* However, in 2005, the administrative agency amended the regulations deleting relevant language regarding the presumption.

Although the Appellate Division has answered the question as to what it means to be a “resident” of this State as it pertains to dependent students whose primary guardian is prevented from establishing a New Jersey domicile due to immigration status, the HESAA, the authority responsible of 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 due to the HESAA being mandated to act in accordance with the regulations. This could result in further litigation that could be avoided with a modification to the statute. Staff seeks to modify the language of *N.J.S. 18A:71B-2(b)* to incorporate the decision in *A.Z. ex rel. B.Z.* and has prepared a draft of a potential revision of the statute.

DRAFT

N.J.S. 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, the residence of a dependent student shall be presumed to be 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* incorporates the Legislature's intent by codifying the notion that there is a presumption that a dependent student's legal residence is the same as his or her parent's residence. The revision incorporates the determination of the Appellate Division in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 N.J.Super. 389 (2012), dealing with the ambiguity regarding what it means to be a "resident" of this State in the contest of dependent students whose primary caregiver is prevented from establishing, or has not established, a New Jersey domicile. 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. Moreover, it was 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.

The revised language incorporates the Court's interpretation of the statute, including some of the exact language used in the Court's decision. *See id.* at 5. In response to the Commission's concerns regarding the use of the phrase "primary guardian" in the previous draft, that language has been removed. The new proposed language, "parents or guardians", now mirrors the exact language used throughout this section.