

Looking Out For Your Legal Rights®

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*Cuáles Son Sus
Derechos Legales
La versión en
español la encontrará
al reverso.*

FAMILY LAW

Relocation and Custody:

Can My Child Move Out of New Jersey?

THIS IS ONE of three articles published in *Looking Out for Your Legal Rights* for families with parents currently living or hoping to live in different states. This article describes the New Jersey laws that apply when one parent wants to move out of New Jersey with their child or children. The other articles discuss child custody and parenting time issues for parents living in different states and child support issues for parents living in different states. You can find all three articles on our website, www.lsnjlaw.org.

This article is intended to help both custodial parents and non-custodial parents understand the New Jersey laws that apply to moving a child to another state.

This article is intended to help both custodial parents (sometimes called the *parent of primary residence*) and non-custodial parents (sometimes called the *parent of alternate residence*) understand the New Jersey laws that apply to moving a child to another state. If the non-custodial parent wants to move out of New Jersey (without a child), there are no laws that prevent

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the move. However, if a custodial parent wants to move out of New Jersey with a child, the courts may become involved and may ultimately prevent the parent from moving the child out of state. When a parent moves out of a state with a child, the legal term is *removal* or *removing* the child to another state.

Removing a child to another state usually makes it much more difficult for the parent left in New Jersey to have frequent contact with the child. In a typical custody order, a non-custodial parent may be granted parenting time with the child every other weekend from Friday evening to Sunday evening and dinner time every Wednesday. If the custodial parent with such a parenting-time schedule moved with the child from New Jersey to Florida, it would be practically impossible for the parent remaining in New Jer-

sey to see the child on the schedule ordered by the court.

For that reason, several laws create restrictions on a parent removing a child to another state. It is a crime to withhold a child from the other parent during court-ordered parenting time. Unless the child moves nearby in a neighboring state, removing a child to an-

It is a crime to withhold a child from the other parent during court-ordered parenting time.

other state creates such a barrier to parenting time that the parent who moved the child may be charged criminally with unlawful interference of parenting time. An exception may be made if the custodial parent who removes the child is fleeing from immediate risk of physical harm from the other parent or immediate risk of harm to the welfare of the child, but the custodial parent **MUST** report the removal and the reason within 24 hours to one of the following:

Looking Out For Your Legal Rights®

About Looking Out

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- The Division of Child Protection and Permanency (formerly known as DYFS) 1-877-NJ-ABUSE (652-2873);
- The county prosecutor’s office; or
- The local police.

Non-custodial parent must consent to the move

A parent who wants to move with a child to another state should discuss these wishes or plans with the other parent. Under New Jersey law, a parent may remove a child to another state only with either (1) consent of the other parent or (2) a court order granting permission, unless the parent is (3) fleeing immediate risk, as discussed above. If both parents agree that the custodial parent will move to another state with the child, the moving parent should first ask the non-custodial parent to sign a written statement that he or she consents to the move. This can be a simple typed or neatly handwritten paper stating that the non-custodial parent gives the custodial parent permission to move with the child outside of New Jersey. The paper should be signed by both parents, before a notary if possible. The law does not require the consent to be in writing, but it is very helpful in avoiding a misunderstanding or last-minute change of heart.

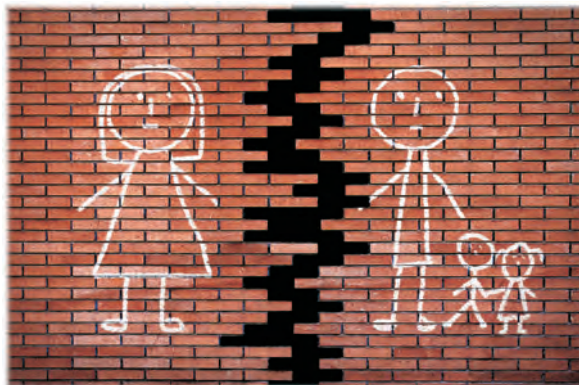
Court order needed if non-custodial parent does not consent to the move

If the non-custodial parent does not agree to the child moving to another state, the custodial parent must ask the court for an order granting permission to remove the child to the other state. If the custodial parent moves or states an

intent to move in the near future with the child to another state, the non-custodial parent may ask the court (on an emergency basis, if necessary) to enter an order prohibiting the custodial parent from moving the child out of New Jersey, at least until a court can hear the case.

Custodial parent must show that the move is in the child’s best interest

If the custodial parent files formal papers with the court (called a *motion* or *application*, depending on whether the parents are divorced) to remove the child to another state, that parent must include factual statements that show that the move is in the child’s best interest. This usually starts with explaining the reasons for the move, such as a good job or supportive relatives in the other state. Because moving the child to another state will impact the current order, it is also a request to modify the current custody and parenting-time order. Just like in a custody hearing, the parent seeking to move with the child must also address the factors that are listed in the child custody statute related to the best interest of the child. Those include:



Removing a child to another state usually makes it much more difficult for the parent left in New Jersey to have frequent contact with the child.



The custodial parent should provide in writing a reasonable parenting-time schedule for the child to maintain a strong relationship with the other parent.

- Parents' ability to agree and cooperate
- Willingness to accept custody
- History of interference with custody
- Interaction with parents/siblings
- History of domestic violence
- Safety factors
- Preference of child
- Needs of child
- Education
- Parental fitness
- Geography
- Extent of and quality of time spent
- Employment responsibilities
- Age
- Number of children.

The parent seeking to move with the child should compare the medical, educational, and recreational resources available for the child in New Jersey and in the other state, especially if the child has special needs, talents, or interests that require the use of such resources. For example:

- Your child needs medical treatment that is not available near his New Jersey home.

- Your child is exceptionally smart and her New Jersey school does not offer advanced classes or a gifted and talented program, but the proposed new school does offer special programs for advanced students.
- Your child has shown exceptional talent in a sport that is not fostered in your New Jersey community, but has high level competition and coaching available in the proposed new community.

Parenting-time schedule

The custodial parent should also provide in writing a reasonable parenting-time schedule for the child to maintain a strong relationship with the other parent. Such a schedule may include the majority of school holidays being spent with the New Jersey parent. The plan must also include reasonable transportation arrangements, including both the type of transportation that is available and a proposal of who will pay toward the transportation. A parenting-time plan may include both the child returning to New Jersey and the non-custodial parent traveling to the child's new state. If the non-custodial parent will be expected to travel to the other state for parenting time, the plan must include provisions for that parent's transportation and a place to stay.

In addition to visits between the non-custodial parent and the child, other types of communications should be considered, including telephone (cell phone), email, and other computer-assisted communications such as instant messaging, digital photographs, and webcams.

A non-custodial parent who does not want the child to leave New Jersey must respond to the request with a reply certification that corrects any inaccurate statements in the custodial parent's papers. The non-custodial parent must also state the reasons the child should not leave New Jersey. These reasons often include concerns about the limits on parenting time available from another state, as well as any concerns about the child's safety, health, education, or general welfare from moving to the other state. As an example, a non-custodial parent might want to give the court documents confirming that the child is disabled and receives appropriate special

education services through the public schools, but those services are not available in the community that is being proposed.

When the court receives the papers from both parents, the court will hold a hearing. At the hearing, The court will hear each parent prove the factual statements in their papers and argue about whether the child's best interests are served by moving to the other state and using the proposed parenting-time schedule.

Read more about custody and visitation on our website, www.lsnjlaw.org. □

*By Mary McManus-Smith, Chief Counsel,
Legal Services of New Jersey*

EDUCATION LAW

School Residency During Family Crisis

IN MOST situations, if a family moves out of the town they live in, school-age children will have to change to a school in the town where they moved. In certain situations (such as when a child does not have fixed, adequate, and regular housing or has been placed in a foster home, specific laws and rules apply that would permit them to remain in their current school despite moving. Under New Jersey law [N.J.S.A. 18A:38-1.1], a student may be allowed to remain in their school for the rest of the school year (or their summer program) if they move from their school district due to a "family crisis." Some examples of what might be considered a family crisis include:

- Incidents of domestic violence
- Incidents of sexual abuse
- Disruption of the family due to a death of a parent or guardian

- Having to move because their home is no longer inhabitable due to fire, flood, storm, or something else.

If your family has recently moved due to a family crisis and you think that your child/children may have the right to remain in their current school, this article will explain your child's rights under this law.



If your family has recently moved due to a family crisis, your child may have the right to remain in their current school.

***I think this law applies to my child.
What do I do?***

If you have moved and you think this law applies to your situation, you need to let your child's school district know that you have moved due to a family crisis and that you want your child to stay in their school until the end of the school year (or summer program).

What if the school district does not believe me?

The school district is allowed to ask you to show them documents that support that you moved due to a family crisis. Some examples include newspaper articles, insurance claims, police or fire reports, letters from medical providers, custody agreements, or other legal documents. The school district is not permitted to require certain types of documentation.

While the school district is reviewing my documents, where does my child attend school?

While the school district is reviewing your request, your child has the right to remain in their school and receive transportation.

What if the school district does not agree that there was a family crisis?

If the school district does not agree that your situation meets the requirements of the law, they must let you know in writing. The written notification must state that you have the right to appeal the decision within 21 calendar days of the date you received the notification. It must also let you know that if you appeal and your appeal is denied, you could be charged the cost of transportation for

the period your child was found not to be eligible to remain in the school.

How do I appeal?

If you want to appeal a school district's denial, you must send a written request, and include any supporting documentation, to the county superintendent in the county where the school district is located. For a list of the county superintendents and their contact information, see www.nj.gov/education/counties. Within 30 calendar days of receiving your request, the county superintendent must decide if your situation is a family crisis. During this time, your child has the right to remain in school and continue to receive transportation. If the county superintendent decides that your situation was not a family crisis, you could be required to pay the cost of transportation for the period of ineligible attendance.

Can I appeal the county superintendent's decision?

Yes, you can appeal the county superintendent's decision by filing a petition for appeal with the NJ Department of Education's Bureau of Controversies and Disputes within 90 calendar days of the county decision. During this appeal process, there is no automatic right for continued enrollment or transportation, but you may be able to seek emergent relief when you file your petition. For more information about this appeal process and emergent relief requests see www.nj.gov/education/genfo/faq/faq_candd.htm. □

*By Rachel R. Elkin, Supervising Attorney,
Education Representation Project,
Legal Services of New Jersey*

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www.LSNJLAWHOTLINE.org



Cuáles Son Sus Derechos Legales

Abril 2018

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Si su familia se ha mudado recientemente debido a una crisis de la familia, su hijo/hijos tendrían derecho a permanecer en la escuela a la que asisten en la actualidad.

Página 1

*Looking Out
For Your Legal Rights*
Flip issue over for the
English edition of
*Looking Out for Your
Legal Rights.*

DERECHO EDUCATIVO El domicilio de su hijo para efectos escolares durante una crisis familiar

EN LA MAYORÍA de las situaciones, si una familia se traslada fuera de la ciudad donde viven, los niños en edad escolar tendrán que cambiarse a una escuela en la ciudad a donde se han mudado. En ciertos casos (como cuando un niño no tiene una vivienda habitual, fija ni adecuada o ha sido ubicado en un hogar de cuidado tutelar, se utilizarán leyes y reglas específicas para permitirle la permanencia en la escuela actual a pesar de haberse mudado. En virtud de la ley de Nueva

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El boletín de educación jurídica para los habitantes de Nueva Jersey

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Jersey [N.J.S.A. 18A:38-1.1], se le podría permitir a un estudiante permanecer en la escuela actual por el resto del año escolar (o programa de verano) si dicho estudiante se tiene que mudar de su distrito escolar debido a una “crisis de la familia”. Algunos ejemplos de lo que podría considerarse como una crisis familiar incluyen:

- Los incidentes de violencia doméstica;
- Los incidentes de abuso sexual;
- La interrupción de la familia debido a la muerte de uno de los progenitores o tutor;
- El tener que mudarse porque su hogar ya no es habitable debido a un incendio, inundación, tormenta, o algo más.

Si su familia se ha mudado recientemente debido a una crisis de la familia y usted piensa que su hijo/hijos tendrían derecho a permanecer en la escuela a la que asisten en la actualidad, este artículo le

explicará los derechos que su hijo tiene en virtud de la presente ley.

Creo que esta ley se aplica al caso de mi hijo, ¿qué puedo hacer?

Si se ha mudado y piensa que esta ley se aplica a su situación, usted debe informarle al distrito escolar al que asiste su hijo de que se ha mudado a causa de una crisis familiar y que a usted le gustaría que su hijo continúe asistiendo a esa escuela hasta el fin del año escolar (o programa de verano).

¿Qué pasa si el distrito escolar no me cree?

El distrito escolar le puede pedir que muestre documentos verificando que se ha mudado a causa de una crisis familiar. Algunos ejemplos de esto incluyen artículos de periódico, reclamaciones al seguro, informes de la policía o bomberos, cartas de algún centro médico, acuerdos de custodia, u otros documentos legales. Hay ciertos tipos de documentos que el distrito escolar no le puede pedir.

Cuáles Son Sus Derechos Legales

Con respecto a *Looking Out*

Looking Out for Your Legal Rights® es publicada 10 veces al año por los Servicios Legales de Nueva Jersey. Si usted es un cliente de los Servicios Legales, puede obtener una copia en la oficina de Servicios Legales de su localidad. También puede leer *Looking Out* en nuestro sitio Web www.lsnj.org/espanol.

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Si se muda, envíenos su nueva dirección y una copia de la etiqueta pegada al último ejemplar de *Looking Out*.

Comentarios

Si tiene alguna sugerencia o comentario con respecto a *Looking Out*, nos gustaría oírlo. Envíe toda correspondencia a:

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Este boletín de noticias es sólo una información general. Si tiene un problema jurídico, usted debería ver a un abogado.

Una parte del costo de esta publicación se cubrió con la ayuda proporcionada por el fondo IOLTA del colegio de abogados de Nueva Jersey.

Mientras que el distrito escolar está revisando mis documentos, ¿a qué escuela va mi hijo?

Mientras que el distrito escolar esté revisando su solicitud, su hijo tiene el derecho a permanecer en la misma escuela y recibir el servicio de transporte.

¿Qué pasa si el distrito escolar no está de acuerdo en que haya ocurrido una crisis familiar?

Si el distrito escolar no está de acuerdo en que su situación cumple con los requisitos de la ley, se lo tendrá que informar por escrito. La notificación tiene que indicar que tiene derecho a apelar la decisión antes de que se cumplan 21 días de la fecha en que usted reciba esta notificación. También tiene que dejarle saber que si su apelación es denegada, a usted se le podría cobrar por el costo del transporte durante el período en que se determinó que su hijo no podía permanecer en la escuela.

¿Cómo puedo apelar?

Si desea apelar la negativa del distrito escolar, tendrá que enviar una solicitud por escrito junto con toda la documentación que brinde apoyo, al superintendente del condado donde está ubicado el distrito escolar. Para obtener una lista de los superintendentes de cada condado y la información para contactarlos, consulte www.nj.gov/education/counties. Dentro de los 30 días calendario de haber recibido la solicitud, el superintendente tendrá que decidir si su situación es una crisis familiar. Durante este tiempo, su

hijo tiene el derecho a permanecer en la escuela y continuar recibiendo el servicio de transporte. Si el superintendente decide que su situación no era una crisis familiar, se le podría obligar a pagar los gastos del transporte durante el período de asistencia no permitida.

¿Puedo apelar la decisión del superintendente del condado?

Sí, usted puede apelar la decisión del superintendente por medio de la interposición de un recurso de apelación ante la oficina de controversias y disputas, en el Departamento de Educación de Nueva Jersey dentro de los 90 días calendario a partir de la decisión del condado. Durante este proceso de apelación, no hay ningún derecho automático para continuar matriculado o recibiendo el transporte, pero tal vez pueda buscar asistencia urgente cuando presente su petición. Para obtener más información acerca del proceso de apelación y cómo pedir asistencia urgente vea, www.nj.gov/education/genfo/faq/faq_candd.htm.



Si su familia se ha mudado recientemente debido a una crisis de la familia, su hijo/hijos tendrían derecho a permanecer en la escuela a la que asisten en la actualidad.

Este artículo fue traducido del inglés por Al Moreno, coordinador del servicio lingüístico en LSNJ.