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## Conducting Student Residency Investigations

Midwest Principals' Center

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### I. Residency

#### A. Regular Education

Section 5/10-20.12b of the School Code contains the criteria for determining whether a regular education student is a resident of a school district and can therefore attend its schools on a tuition-free basis. The School Code sets forth that “the residence of a person who has legal custody of a pupil is deemed to be the residence of the pupil.” Generally, a student will be regarded as a school district resident and enrolled on a tuition-free basis if the student falls within one of the following categories:

1. The student and the person with *legal custody* of the student live in the school district on a full-time and indefinite length of time basis. A person usually will be deemed to have custody of the student when the person is an adult and has immediate and predominant authority and control over most of the major aspects of the student’s life. Major aspects of the student’s life include medical treatment, discipline, financial support, education, social activities and day-to-day nourishment, care and sleeping arrangements. *Legal custody* exists in any one of the following circumstances:
  - Custody is exercised by a natural or an adoptive parent with whom the student resides.
  - Custody has been granted by court order to a person with whom the student resides for reasons other than to have access to the educational programs of the district.
  - Custody is exercised under a short-term guardianship, provided that within 60 days of the student’s enrollment a court order is entered that establishes a permanent guardianship and grants custody to a person with whom the student resides for reasons other than to have access to the educational

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programs of the district. Short-term guardianship is transferred by a document containing information specified by law and signed by the parent transferring guardianship to another person.

- ❖ The Illinois State Board of Education’s “Registration Guidance” states that a failure to obtain a court order granting permanent guardianship with 60 days should *not* be grounds to disenroll the student.
  - Custody is exercised by an adult relative caretaker who is receiving aid under the Illinois Public Aid Code for the student who resides with that caretaker for purposes other than to have access to the educational programs of this District.
  - Custody is exercised by an adult who demonstrates that, in fact, he or she has assumed and exercises legal responsibility for the student and provides the student with a regular fixed nighttime abode for purposes other than to have access to the educational programs of this District.
2. The student is a *foreign exchange student* in a program approved by the State Board of Education and the Superintendent.
  3. The student has been placed with a *foster parent or child care facility* by the Department of Children and Family Services outside this District, but DCFS has determined it to be in the best interests of the student to maintain attendance in this District.
  4. The student is *at least 18 years old* and lives in this District on a full and indefinite length of time basis.
  5. The student is under 18, but has been *emancipated* by court order or marriage and lives in this District on a full and indefinite length of time basis.
  6. An enrolled resident student *becomes a non-resident during the school term*. The student may continue to attend tuition-free until the end of the regular school term in June so long as the student maintains enrollment.
  7. The student is *homeless*.

If the student does not meet one of these criteria, the student should not be enrolled, or the formal disenrollment process should be started if the student has already been attending school.

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**B. Special Education- “Resident District”**

The provisions establishing residency for special education students are contained within Section 14-1.11 and 14-1.11a of the School Code. The first Section sets forth the situations in which the district where the *parent or legal guardian* of the student resides will be considered the “resident district” for purposes of providing and/or funding the special education program and services of the student. This will occur when:

- the parent has legal guardianship of the student and resides within Illinois; or
- an individual guardian has been appointed by the courts and resides within Illinois; or
- an Illinois public agency has legal guardianship and the student resides either in the home of the parent or within the same district as the parent; or
- an Illinois court orders a residential placement but the parents retain any legal rights or guardianship and have not been subject to a termination of parental rights order; or
- in cases of divorced or separated parents, when only one parent has legal guardianship or custody, the district in which the parent having legal guardianship or custody resides is the resident district; or
- when both parents retain legal guardianship or custody, the resident district is the district in which either parent who provides the student's primary regular fixed night-time abode resides; provided, that the election of resident district may be made only one time per school year; or
- when the parent has legal guardianship and lives outside of the State of Illinois, or when the individual legal guardian other than the natural parent lives outside the State of Illinois, the parent, legal guardian, or other placing agent is responsible for making arrangements to pay the Illinois school district serving the child for the educational services provided. Those service costs shall be determined in accordance with Section 14-7.01 of the School Code. 105 ILCS 5/14-1.11.

Section 14-1.11a of the School Code provides that the resident district for purposes of providing and/or funding a student's special education program and services is the school district in which the *student* resides when:

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- the parent has legal guardianship but the location of the parent is unknown; or
- an individual guardian has been appointed but the location of the guardian is unknown; or
- the student is 18 years of age or older and no legal guardian has been appointed; or
- the student is legally an emancipated minor; or
- an Illinois public agency has legal guardianship and has placed the student residentially outside of the school district in which the parent lives. 105 ILCS 5/14-1.11a.

This Section also states that in cases where an Illinois public agency has legal guardianship and has placed the student residentially outside of Illinois, the last school district that provided at least 45 days of educational service to the student shall continue to be the district of residence until the student is no longer under guardianship of an Illinois public agency or until the student is returned to Illinois. *Id.*

**C. Guidelines Regarding Custody and Control**

If a student's residency is unclear, the District may request additional information and conduct an investigation. As part of the residency investigation, facts should be gathered through completion of residency questionnaires, review of additional documents relating to residency, interviews, a visit to the residence and/or observations as appropriate to the situation.

Like most aspects of student residency issues, the question whether custody and control of a student has been transferred by a custodial parent or guardian of the student to another person with whom the student lives in the school district must be answered by collection and analysis of facts. Although no single fact is necessarily determinative nor do all of the following facts have to be present, the following facts suggest a change in custody and control sufficient to establish residency for purposes of tuition-free attendance at school:

- The custodial parent or guardian seldom sees the student on weekends, at mealtimes, overnight, or on school holidays and vacations.
- The custodial parent or guardian seldom converses by telephone with the student or the person with whom the student lives in the school district.

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- The custodial parent or guardian lives such a distance from the student that effective control over the student is unlikely.
- The person with whom the student lives, and not the custodial parent or guardian:
  - ❖ disciplines the student;
  - ❖ arranges for medical care;
  - ❖ determines when the student comes and goes from the place of residence;
  - ❖ determines who the student sees as friends;
  - ❖ provides meals for the student;
  - ❖ meets much of the day-to-day financial needs of the student.
- The student lives apart from the custodial parent or guardian for reasons other than attendance at school, such as financial difficulties of the custodial parent or guardian, marital or family strife in the home of the custodial parent or guardian, inability of the custodial parent or guardian to control the student, or emotional, alcohol or drug-related problems of the student or the custodial parent or guardian.
- The custodial parent or guardian does not claim the student as a dependant on his or her federal income tax return.

In addition to the factors summarized above, the student must live in the school district on a full-time and indefinite length of time basis.

**D. Enrollment/Disenrollment Decisions**

Except for students claiming to be homeless, a student generally should not be enrolled until the investigation is completed and a final decision made. A final decision should generally not be made on residency until the results of the investigation are discussed with the person seeking to enroll the student. However, if a student is enrolled, the student should not be disenrolled until after a conference is held with the parent and the person with whom the student lives and the School Code procedures set forth below are followed. If the student is an adult, the student should be included in the conference.

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If the School District denies enrollment to a child claiming to be homeless, the parent or guardian must be referred to the Regional Superintendent and to sources of low-cost or free legal or other advocacy services in the community.

E. **Residency Investigations**

1. Investigation Triggers

The following is a non-exhaustive list of facts that may alert the School District that a student in attendance may no longer reside within the District's boundaries:

- School mail is returned;
- The District receives tips from community members;
- A student fills out paper work with a different address;
- A parent drops off and picks up a student from school when the student is signed up for bus service;
- Bus driver reports that parent consistently picks student up at bus stop and drives out of community; or
  - ❖ Occurrence of any of the aforementioned facts is sufficient to trigger a residency investigation.

2. Conducting the Residency Investigation

If the District suspects that a student in attendance is no longer a resident, the School District may conduct a residency investigation. A residency determination can only be made by gathering and analyzing a set of facts through an investigation. Keep in mind that no single fact is necessarily determinative. As part of the residency investigation, facts should be gathered through completion of residency questionnaires, review of additional documents relating to residency, interviews, visiting the residence and/or making other observations appropriate to the situation.

A thorough residency investigation should include the following components:

- Asking the person who enrolled the student to complete a residency questionnaire;

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- Asking the person who enrolled the student to provide additional documentation verifying the student's residency;
- Asking a parent or guardian who lives outside the District to complete a questionnaire;
- Visiting the alleged residence during the evenings and/or on the weekends and documenting all visitations and findings;
- Following a student to and from school in the morning and after school;
- Hiring an outside investigator to observe the home and students and obtain information from the Secretary of State and Recorder of Deeds; and
- Making any other observations that are appropriate to the situation and documenting all findings.

The investigative process may vary on a case-by-case basis and must be able to flexibly accommodate the various sets of circumstances that might arise during any particular investigation.

F. **Notice and Hearing Procedure Prior to Disenrollment**

1. Notice of Tuition Due

Upon determining that a currently enrolled student is not a resident of the School District, the Board, or the Superintendent on behalf of the Board, must give notice to the person who enrolled the student of the amount of tuition owed to the School District and, if applicable, the intention to disenroll the student. The notice must be given by certified mail, return receipt requested.

If the student is a resident of the School District, but is attending school in the wrong attendance area, a similar notice must be sent to the person who enrolled the student as described above. However, the amount of tuition due can be omitted, since the student is a resident of the School District.

2. Request for Review

The person who enrolled the student may request a review hearing within 10 days of receipt of the tuition notice. If a hearing is requested, the Board, or the Superintendent, must notify the requestor within 10 days after receipt of the request, by certified mail, of the time and place of the

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hearing. The hearing must be held not less than 10 and not more than 20 days after the date of the notice of hearing.

3. Hearing Procedure

The Board may hold the hearing itself or designate a hearing officer to do so. The person requesting the hearing may also be represented by the representative of its choice, and has the burden of providing evidence of the pupil's residency.

4. Post-Hearing Procedure

If a hearing officer conducted the hearing, the hearing officer must send a written report of his or her findings by certified mail, return receipt to the Board and the person who enrolled the student within 5 days after the close of the hearing. The person who enrolled the student may file written objections to the Superintendent within 5 days after receiving the findings. Regardless of whether the Board or the hearing officer conducts the hearing, the Board must make a determination as to the student's residency within 15 days after the close of the hearing and send its decision to the person who enrolled the student.

5. Disenrollment

The student may not be disenrolled until at least 10 days after receipt of the tuition notice. If the person who enrolled the student requests a hearing within 10 days, and requests that the student remain in school pending the hearing, then the Board may not disenroll the student until the conclusion of the hearing process.

## II. Homeless Students

Homeless students are protected under the Illinois Education for Homeless Children Act, 105 ILCS 45/1-1 et seq. Additionally, the federal No Child Left Behind Act of 2001 reauthorized the McKinney-Vento Homeless Assistance Act. Effective July 1, 2002, the reauthorized law provides expanded rights to homeless children and youths and increases a school district's obligations regarding the education of homeless students.

A. Definition of "Homeless"

A homeless student is one who:

- lacks a fixed, regular and adequate nighttime place of abode; or

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- who has a primary nighttime place of abode that is:
  - ❖ shared with others due to loss of housing, economic hardship, or a similar reason;
  - ❖ a motel, hotel, trailer park, or camping ground due to the lack of alternative adequate accommodations;
  - ❖ a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing);
  - ❖ an institution that provides a temporary residence for individuals intended to be institutionalized; or
  - ❖ a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, *i.e.*, cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings.

In addition, any student who is abandoned in a hospital or awaiting foster care placement is also considered a homeless student under the Illinois Education for Homeless Children Act.

**NOTE:** If a student's family is at imminent risk of losing their housing (within 14 days) due to eviction, foreclosure, economic hardship, or some other reason; has no subsequent residence identified; and lacks the resources or support networks needed to obtain other permanent housing, that student would likely be considered to "lack a fixed" nighttime abode. See 42 U.S.C.A. § 11302(a)(5) *as amended by* Pub. L. 111-22, Div. B, § 1003(a), Title V, § 1503, May 20, 2009, 123 Stat. 1664, 1702.

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- B. Rights of Homeless Students: Choice of School
1. A parent or guardian of a homeless student may enroll that student in either:
    - a) The “school of origin,” or
    - b) The school for the attendance area in which the student actually lives.
  2. The “School of Origin” is:
    - a) The school that the student attended when permanently housed, or
    - b) The school in which the student was last enrolled.
- C. Obligations of Schools
1. Immediate enrollment
    - a) The school district must immediately enroll the student, even if the parents are unable to provide records normally required for enrollment, such as proof of residency or other documentation.
    - b) The school may ask for an address or phone number to reach the parent or guardian.
  2. Promptly contact the school last attended by the student to obtain relevant records.
  3. Immediately refer homeless students for necessary immunizations in order to facilitate their prompt admission.
  4. Transportation Obligations:
    - a) Parents or guardians must make a good faith effort to provide the student with transportation to the school of origin, if that is the school chosen for attendance.
    - b) If the parents or guardians, after making a good faith effort, cannot obtain the requisite transportation, it shall be provided as follows:

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- (1) If the child continues to live in the school district of origin, the child's transportation to and from school shall be provided or arranged by the school district in which the school of origin is located.
  - (2) If the child moves out of the district of origin, the school district of origin and the school district in which the child is living must meet to apportion the responsibility and cost for providing the child with transportation to and from the school of origin.
  - (3) If there is no agreement, the responsibility and costs for transportation are to be shared equally.
5. Each school district must designate an appropriate staff person (i.e. social worker) to be the district's Homeless Liaison, as required under the McKinney-Vento Act. The Homeless Liaison should assist in gathering information and providing the necessary services as described above.
6. Notice of Educational Rights Obligations: School districts must provide written notice, at the time any homeless student seeks enrollment in a school, and at least twice annually while the student is enrolled in the school, to the parent or guardian of the student which:
- a) Shall be signed by the parent or guardian;
  - b) Sets forth the general rights provided under the McKinney-Vento Homeless Assistance Act; and
  - c) Specifically states:
    - (1) The choice of schools homeless students are eligible to attend;
    - (2) That no homeless student is required to attend a separate school for homeless students
    - (3) That homeless students shall be provided equal access to all education programs and services for which they are eligible and that non-homeless students enjoy including transportation services, educational services, and meals through school meals programs;

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- (4) That homeless students will not be stigmatized by school personnel; and
- (5) Contact information of the local liaison for homeless students

7. Each district shall ensure that guidelines which explain the educational rights of homeless students and the responsibilities of local school districts to serve those students is disseminated throughout the community, such as at schools, family shelters, and soup kitchens.

D. Denial of Enrollment or Transportation

1. The Illinois Education for Homeless Children Act allows schools to investigate into a student's status as homeless.
2. The regional superintendent will appoint a qualified person to be the ombudsperson for the school district.
3. If the school district denies enrollment or transportation to a child claiming to be homeless, the school district must provide the parent or guardian with a written explanation of the denial and with referrals to the appointed ombudsperson and to sources of low-cost or free legal or other advocacy services in the community. The district must also send a copy of such letter to the applicable regional superintendent of schools and Illinois' Coordinator for the Education of Homeless Children & Youth ("State Coordinator").
4. The student shall be admitted to the school chosen by the parent or guardian and, if the school is the child's "school of origin," transported to that school, until the dispute is resolved.
5. The ombudsperson shall convene a meeting of all parties and attempt to resolve the dispute within five (5) school days after receiving notice of the dispute, if possible.
6. At the conclusion of the meeting, the ombudsperson must communicate his/her decision to the parties. Either party may, within 5 school days of the ombudsperson's decision, submit a written request for appeal to the State Coordinator.
7. No later than 10 school days after receiving the request for review, the State Coordinator shall make a recommendation to the State Superintendent of Education regarding the Ombudsperson's decision and

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the appropriate placement of the student (deferring in this review to any and all findings of fact by the Ombudsperson).

**NOTE:** The State Coordinator confines his/her review of an Ombudsperson's decision to "compliance with applicable law," i.e. determining whether the ombudsperson followed the applicable dispute procedures.

8. Within 10 days of receiving the State Coordinator's recommendation, the State Superintendent of Education or designee will inform all parties of the final determination.

E. Continued Verification of Homelessness Status

1. After an 18-month period, and annually thereafter, the school district may continue to investigate whether families who share housing with another person should continue to be identified as homeless under the Act.
  - a) The district may evaluate a variety of factors to determine whether a family continues to share housing with another because of economic hardship, or instead is sharing housing solely for the purpose of school attendance.
  - b) If the district determines that the family is sharing living quarters with a resident solely for the purpose of school attendance, the district can determine that the students no longer have homeless status at the end of the academic year, may notify the family of its decision, and begin the process of dispute resolution.
  - c) Before making such a determination, the school district should consult with a school law attorney.