



## ILLINOIS STATE BOARD OF EDUCATION

### MEMORANDUM

**DATE:** September 30, 1999

**TO:** Regional Offices of Education

**FROM:** Legal Department

**RE:** Residency and Tuition - Non-Special Education Students

The basic rule is that a student's residency for purposes of public school attendance is the district in which his parents reside. If a student is not living with parents, the inquiry turns to whether the student is living in another district *solely* for the purpose of going to school in this other district. If the answer to that inquiry is "yes," then the district of residence for this student, who has moved away from the parents' home nevertheless remains that of her parents for purposes of entitlement to attend public school tuition free. However, if the reason for the student's living away from parents is not solely to attend school in another district, then the student is entitled to attend tuition free in that district where he or she actually has a regular nighttime abode.

Basic rules about tuition and residency for regular education are found in Sections 10-20.12a and 10-20.2b of the School Code (105 ILCS 5/10-20.12a and 105 ILCS 5/10-20.12b). Portions of the School Code such as Sections 14-1.11; 14-1.11a; and 14-1.11b are relevant in making residency determinations in cases involving special education (105 ILCS 5/14-1.11; 105 ILCS 5/14-1.11a; and 105 ILCS 5/14-1.11b). Questions about tuition and homelessness are addressed in the Education for Homeless Children Act, 105 ILCS 45/1-1 and following sections, as well as in comparable portions of federal law (Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. Section 11301 and following).

A number of the examples below are based upon actual situations that have come to our attention. For ease of reading, citations to court cases have been omitted. If you need additional information, specific legal references or help with a current situation, please contact your local legal counsel or our office.

## QUESTIONS AND ANSWERS ON RESIDENCY AND TUITION (Regular Education)

1. **Question:** If a child lives apart from his parents from any reason other than to establish school residency, and an adult has taken over the parental role of support, custody and discipline, is this enough to establish school residency?  
**Answer:** Yes.
2. **Question:** If a child moves in with a relative, must the relative obtain guardianship from a court as a condition for the child to attend school tuition free in the relative's district?  
**Answer:** Clearly No.
3. **Question:** If parents, who live in District "A," successfully petition a court to grant legal guardianship of their children to a grandmother, who lives in District "B," *and the sole purpose of the guardianship is to permit the children to attend school in District "B,"* may the children attend in District "B" without paying tuition?  
**Answer:** No. See Section 10-20.12b(a)(2) of the School Code.
4. **Question:** Does a district have the right to request proof of residency?  
**Answer:** Clearly Yes.
5. **Question:** What documents may be used to establish residency?  
**Answer:** Anything that shows that the child's parent or other proper enrolling custodian is actually living within the district - for example, a lease, addressed mail, utility bill, letter or affidavit stating the facts about residency.
6. **Question:** May a district require a specific type of proof for all situations?  
**Answer:** No. For example, if Family "A" is living permanently with Family "B" and all housing records are in the name of a member of Family "B," it may be that the only available proof of Family "A's" residency is a signed statement describing their living arrangements. Making false written statements about residency in order to obtain tuition-free attendance could subject one to a misdemeanor criminal charge (see, School Code 10-20.12b(f)). Therefore, in view of this penalty that would presumably deter most persons from making false statements, a district should normally be willing to accept from the person enrolling the child a letter or other written statement which sets forth facts that would constitute residency.
7. **Question:** What should a district do if, at the time of enrollment or after enrollment, it becomes aware of information that contradicts a residency statement from a person who enrolled the student?  
**Answer:** Consistent with Section 10-20.12b, a district should -

  - ▶ challenge residency;
  - ▶ pursue collection of any tuition owed; and
  - ▶ report the matter to the local State's Attorney, if the written statement appears to contain willingly or knowingly falsified information that was included for the purpose of enabling a nonresident student to attend without paying tuition.
8. **Question:** Can a 18-year-old establish his own residency?  
**Answer:** Yes. Illinois law considers one to be an adult at 18; therefore, the 18-year-old can establish his own residency.

9. **Question:** If someone under age 18 lives on her own and does not rely on her parents for support, is she emancipated and therefore able to establish her own residency? Example: a 17-year-old girl moves in with a boyfriend and severs all ties with her parents.

**Answer:** If such situations involving older teenagers were to be ruled upon by a court, there is every likelihood of a declaration that emancipation *has already occurred*. Whenever a situation indicated obvious emancipation, it would be inappropriate for a district to insist that time and money be spent seeking a court decree to declare the emancipation; for a person to be regarded as emancipated does not require a court finding. Emancipation can be recognized from such actions as marriage or entry into the armed services, or because of direct actions of the child's parent (for instance, a written document from the parent or a situation where an older teenager has been forced from the home or abandoned). An emancipated person's residency for school attendance purposes is wherever he or she happens to live.

*On the other hand, when younger persons unable to manage their own affairs and provide for themselves have been abandoned or neglected by parents, custodians or guardians, emancipation has not occurred. When school personnel "have reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child, [school personnel, among other persons specified by law] shall immediately report or cause a report to be made to the [Illinois Department of Children and Family Services]."*

*See Section 4 of the Abused and Neglected Child Reporting Act, 325 ILCS 5/4.*

10. **Question:** Can a child move in with a non-custodial parent and attend school in the local district tuition free, even though a divorce decree gives sole custody to the other parent?

**Answer:** Yes, especially when the arrangement is with the consent of the custodial parent. On the other hand, if the district becomes aware that the custodial parent is taking court enforcement action to regain actual custody, the district should seek case-specific legal advice on whether to charge tuition. If a district is faced with such a situation, it would be appropriate to allow the student to enroll in school and then proceed to answer questions of residency and tuition under the provisions of Section 10-20.12b of the School Code. Whenever a child is enrolled under circumstances where it appears that the custodial parent or legal guardian is unaware of the child's whereabouts, the district should be alert to the possibility that the child may be classified as "missing" and follow procedures and make notifications as described in applicable law (e.g., Section 5 of the Missing Children Registrations Law, 325 ILCS 55/5).

11. **Question:** Can an illegal or undocumented alien establish residency for purposes of public school attendance?

**Answer:** Yes. The child of an illegal alien whose place of regular nighttime abode is within the district has rights to attend the district's schools tuition free. A child who is not in this country legally and who is living with someone other than her parent has a right to tuition free education through the local district, provided that the child is not in the district for the sole purpose of attending school at the district. In addition, a homeless student who is an illegal alien has the same rights to public education as other students who are homeless.

12. **Question:** A student's life has been threatened at District "A." Adjacent District "B" is willing to let the student attend one of its schools. Parents, District "A" and District "B" all agree that attending at District "B" would be better than continuing at District "A." May District "A" and District "B" enter into an agreement that would permit tuition free attendance at District "B."

**Answer:** Yes. See Section 10-22.5a of the School Code. Districts may, but are not required to, enter into such agreements under certain conditions when health and safety concerns are at issue.

13. **Question:** In her junior year, Judy attended District “A” and lived with her parents. Her older sister, Margaret, lives in another part of Illinois. Judy, Margaret and their parents believe that District “B” where Margaret resides would provide Judy with better college preparation. Judy moves in with Margaret during the summer before her senior year. The sole purpose of the move is to attend school in Margaret’s district. Judy turns 18 on November 1. Must tuition be paid, and to what extent?  
**Answer:** Pro-rated tuition is owed to District “B” for the portion of Judy’s senior year, up through October 31. Not tuition can be charged for the balance of the school year after November 1, even if the sole purpose for Judy’s being in District “B” is to attend school at that district.
14. **Question:** May school districts presume that the children of those who pay taxes on real estate owned in the district are residents for purposes of tuition free attendance?  
**Answer:** No. Mere ownership of real estate does not establish residency for purposes of attending the district’s schools on a tuition free basis.
15. **Question:** A 17-year-old high school student begins his senior year at District “A.” Two weeks later, his family moves into District “B.” May the student attend the balance of his senior year at District “A?”  
**Answer:** Yes. The rule is that if a student’s residence changes during the school year, regardless of whether he is a senior or not, he may finish that year tuition free at the school where he began the term. See School Code, Section 10-20.12a.
16. **Question:** One week before a 17-year-old high school student begins her senior year at District “A,” her family completes a permanent move into District “B.” If the student has attended District “A” since first grade, may the student take her senior year at District “A” without paying tuition?  
**Answer:** No. The key issue is the student’s bonafide residency at the beginning of the school year. It is irrelevant whether she attended since first grade or merely since her junior year of high school. If, however, the family has merely begun preparations for moving and continues to use its house in District “A” as its *bonafide* place of nighttime abode at the beginning of the school year, the student should be regarded as a resident of District “A.” On the other hand, if holding over at the house in District “A” is *solely* for the purpose of tuition free attendance in District “A,” then District “A” should challenge residency - particularly if the family has also been occupying its new place in District “B.”
17. **Question:** Is a school district obligated to accept tuition students?  
**Answer:** No. However, a district that does not have consistent policies and practices runs the risk of potential legal challenges, including but not necessarily limited to challenges based upon discrimination law.
18. **Question:** A district has a policy against accepting tuition students. A student is enrolled in the district and starts attending classes. Subsequently, the district obtains information prompting a determination under Section 10-20.12b that the student is a nonresident and ineligible to attend tuition free. May the district at that point bar the nonresident student from continuing at the district?  
**Answer:** No. Even through the district’s policy does not permit it knowingly to accept nonresident tuition students, a student whose non-residency is not discovered until after enrollment must be allowed to continue in attendance. Under Section 10-20.12b(d), if a hearing on the residency issue is requested, the student’s right to attend (with the possibility that tuition may be owed) extends at least through the date of the school board’s final decision on the issue. Then, if tuition has not been paid, the board must refuse to permit the nonresident pupil to continue attendance. What may be

less than clear from the statute is whether such a district, in contravention to its general policy, would be obligated to accept tuition for future attendance, at least through the balance of the school year.

- 19. Question:** The district boundary line goes through a house. The utility room, garage, part of a foyer and an infant's bedroom are in District "A." The kitchen, living room, family room, dining room and all other bedrooms are in District "B." In which district are the children of school age entitled to a tuition free education?

**Answer:** District "B." One rule for determining this type of boundary issues looks to where the greater part of the house, apartment or mobile home is located. A similar rule looks to the specific location of the fixed nighttime abode. Close questions may require specific legal analysis.

- 20. Question:** A family that lives in District "A" purchased a second house in District "B." Most of the family's time is spent at their house in District "A." The family wants their son and daughter to attend school in District "B." The house is much smaller than the District "A" house. The District "B" house is livable but very shabby when compared to the District "A" house. The sparse furnishings in the District "B" house were bought at a garage sale for a few dollars. To all appearances, the only reason that some of the family members spend occasional time at the District "B" house is to create an impression of residency for school attendance purposes. Should District "B" challenge the family's claim that its residence is District "B"?

**Answer:** Yes. The attempted residency in District "B" is a subterfuge for the sole purpose of attending school in District "B" tuition free. The family's residence is in District "A."

- 21. Question:** An impoverished family has been leasing an apartment in District "A." In early August, before the beginning of school, the family falls seriously behind in its lease payments and is evicted. They move in with an uncle in District "B." He is unwilling to allow the family to stay permanently, but will give them shelter in his house and a place to eat and sleep until they can find their own place to live. May the family enroll its children in either District "A" or District "B"?

**Answer:** Yes. In all likelihood the family's situation (if it does not evolve into a permanent situation in spite of the uncle's wishes) would meet the definition of "homelessness" at the start of the school term. Under Section 1-5 of the Education for Homeless Children Act (105 ILCS 45/1-10), the family may choose to send its children, tuition free, to the district in which they are actually staying at the time or to the district last attended before homelessness occurred. If later during the year the family is no longer homeless, the children may continue attending tuition free for that school year at whichever district was chosen.

## **§ 105 ILCS 5/10-20.12b. Residency; payment of tuition; hearing; criminal penalty**

*Sec. 10-20.12b.* Residency; payment of tuition; hearing; criminal penalty. (A) For purposes of this Section:

- (1) The residence of a person who has legal custody of a pupil is deemed to be the residence of the pupil.
- (2) “Legal custody” means one of the following:
  - (i) Custody exercised by a natural or adoptive parent with whom the pupil resides.
  - (ii) Custody granted by order of a court of competent jurisdiction to a person with whom the pupil resides for reasons other than to have access to the educational programs of the district.
  - (iii) Custody exercised under a statutory short-term guardianship, provided that within 60 days of the pupil’s enrollment a court order is entered that establishes a permanent guardianship and grants custody to a person with whom the pupil resides for reasons other than to have access to the educational programs of the district.
  - (iv) Custody exercised by an adult caretaker relative who is receiving aid under the Illinois Public Aid Code [305 ILCS 5/1-1 et seq.] for the pupil who resides with that adult caretaker relative for purposes other than to have access to the educational programs of the district.
  - (v) Custody exercised by an adult who demonstrates that, in fact, he or she has assumed and exercises legal responsibility for the pupil and provides the pupil with a regular fixed nighttime abode for purposes other than to have access to the educational programs of the district.
- (b) Except as otherwise provided under Section 10-22.5a [105 ILCS 5/10-22.5a], only resident pupils of a school district may attend the schools of the district without payment of the tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a]. However, children for whom the Guardianship Administrator of the Department of Children and Family Services has been appointed temporary custodian or guardian of the person of a child shall not be charged tuition as a nonresident pupil if the child was placed by the Department of Children and Family Services with a foster parent or placed in another type of child care facility and the foster parent or child care facility is located in a school district other than the child’s former school district and it is determined by the Department of Children and Family Services to be in the child’s best interest to maintain attendance at his or her former school district.
- (c) The provisions of this subsection do not apply in school districts having a population of 500,00 or more. If a school board in a school district with a population of less than 500,000 determines that a pupil who is attending school in the district on a tuition free basis is a nonresident of the district for whom tuition is required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a], the board shall notify the person who enrolled the pupil of the amount of the tuition charged under Section 10-20.12a [105 ILCS 5/10-20.12a] that is due to the district for the nonresident pupil’s attendance in

the district's schools. The notice shall be given by certified mail within 45 days after the conclusion of the hearing, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a] as a result of the pupil's attendance in the schools of the district. If the hearing is conducted by a hearing officer, the board of education shall, within 45 days after the receipt of the hearing officer's findings, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a] as a result of the pupil's attendance in the schools of the district. The board of education shall send, by certified mail, return receipt requested, a copy of its decision to the person who enrolled the pupil, and the decision of the board shall be final.

- (d) If a hearing is requested under subsection (c) or (c-5) to review the determination of the school board or board of education that a nonresident pupil is attending the schools of the district without payment of the tuition required to be charged under Section 10-20.12a [105 ILCS 5/10-20.12a], the pupil may, at the request of a person who enrolled the pupil, continue attendance at the schools of the district pending a final decision of the board following the hearing. However, attendance of that pupil in the schools of the district as authorized by this subsection (d) shall not relieve any person who enrolled the pupil of the obligation to pay the tuition charged for that attendance under Section 10-20.12a [105 ILCS 5/10-20.12a] if the final decision of the board is that the pupil is a nonresident of the district. If a pupil is determined to be a nonresident of the district for whom tuition is required to be charged pursuant to this Section, the board shall refuse to permit the pupil to continue attending the schools of the district unless the required tuition is paid for the pupil.
- (e) Except for a pupil referred to in subsection (b) of Section 10-22.5a [105 ILCS 5/10-22/5a], a pupil referred to in Section 10-20.12a [105 ILCS 5/10-20.12a], or a pupil referred to in subsection (b) of this Section, a person who knowingly enrolls or attempts to enroll in the schools of a school district on tuition free basis a pupil known by that person to be a nonresident of the district shall be guilty of a Class "C" misdemeanor.
- (f) A person who knowingly or wilfully presents to any school district any false information regarding the residency of a pupil for the purpose of enabling that pupil to attend any school in that district without the payment of a nonresident tuition charge shall be guilty of a Class "C" misdemeanor.
- (g) The provisions of this Section are subject to the provisions of the Education for Homeless Children Act [105 ILCS 45/1-1 et seq.]. Nothing in this Section shall be construed to apply to or require the payment of tuition by a parent or guardian of a "homeless child" (as that term is defined in Section 1-5 of the Education for Homeless Children Act [105 ILCS 45/1-5]) in connection with or as a result of the homeless child's continued education or enrollment in a school that is chosen in accordance with any of the options provided in Section 1-10 of that Act [105 ILCS 45/1-10].

(Source: P.A. 89-480, § 5; 90-566, § 5.)