

# School Residency Law – Illinois

## The Illinois Law of School Residency

Residency issues are increasingly the subject of concern for many school boards. With the disparities in educational services between districts, especially in affluent suburbs bordering major metropolitan areas, challenges to residency are becoming ever more frequent. The maze of Illinois residency law is complex, and usually the cases are fact intensive.

In this report on the Illinois Law of School Residency, the focus is on (a) Orphans Act Children when school districts can expect reimbursement when providing services in orphanages or other children's homes; (b) when school districts can expect reimbursement for providing services to *out of state* children placed in Illinois under the Orphans Act; (c) reimbursement issues for children placed residentially by a state agency or the courts for care and/or custody; and (d) residency issues under unclear scenarios. Sample policies and procedures are included as appendices.

The definitions immediately below are from Article 14, of the Illinois School Code, which concerns disabled children.

### DEFINITIONS

**(Headings have been added and are not part of statute)**

#### **I. RESIDENT DISTRICT IS THAT OF PARENT**

*Sec. 14-1.11. (105 ILCS 5/14-1.11) Resident district; parent; legal guardian. The resident district is the school district in which the parent or guardian, or both parent and guardian, of the student reside when:*

*(1) the parent has legal guardianship of the student and resides within Illinois; or*

*(2) an individual guardian has been appointed by the courts and resides within Illinois; or*

*(3) 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*

*(4) an Illinois court orders a residential placement but the parents retain legal guardianship.*

## **II. DIVORCED OR SEPARATED PARENTS**

*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. 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.*

## **III. PARENT OR GUARDIAN OUT OF ILLINOIS**

*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. (Source: P.A. 89-698, eff. 1-14-97.)*

## **IV. RESIDENT DISTRICT IS THAT OF STUDENT (105 ILCS 5/14-1.11a)**

*Sec. 14-1.11a. Resident district; student. The resident*

*district is the school district in which the student resides when:*

*(1) the parent has legal guardianship but the location of the parent is unknown; or*

*(2) an individual guardian has been appointed but the location of the guardian is unknown; or*

*(3) the student is 18 years of age or older and no legal guardian has been appointed; or*

*(4) the student is legally an emancipated minor; or*

*(5) an **Illinois public agency** has legal guardianship and has placed the student residentially outside of the school district in which the parent lives.(emphasis added)*

#### **A. CHILDREN PLACED OUTSIDE OF ILLINOIS â LAST DISTRICT**

*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.*

#### **B. HOMELESS STUDENT**

*The resident district of a homeless student is the Illinois district in which the student enrolls for educational services. Homeless students include individuals as defined in the Stewart B. McKinney Homeless Assistance Act. (Source: P.A. 87-1117; 88-134.)*

#### **V. WHEN TO APPLY THE DEFINITIONS (105 ILCS 5/14-1.11b)**

*Sec. 14-1.11b. Resident district; applicability. The provision of Sections 14-1.11 and 14-1.11a shall be used to determine*

***the resident district in all cases where special education services and facilities are provided pursuant to Article 14.***  
(Source: P.A. 87-1117.) (emphasis added)

### **Orphans Act Children**

This provision is located in 105 ILCS Section 14-7.03 and is entitled "Special Education Classes for Children From Orphanages, Foster Family Homes, Children's Homes, or in State Housing Units." The first part of the provision states that if a school district maintains special education classes on the site of an orphanage or children's home, or if the children from such homes (or foster homes or other state agencies or state residential units) attend classes for children with disabilities in which the school district is a participating member of a joint agreement[1], or if these children attend classes for children with disabilities maintained by the local school district, then reimbursement "shall be paid to eligible districts" in accordance with the provisions in the section. What is interesting about this part is the requirement that private facilities must provide "adequate space at the facility for special education classes provided by a school district or joint agreement for children with disabilities who are residents of the facility" and this space must be at no cost to the school district whenever the applicable district decides to request utilization of the space.

School districts claiming reimbursement for a program operated as a "group program" must have an approved budget on file with the State Board of Education prior to initiation of the program. Districts claiming reimbursement for individual students must have the "eligibility of those students verified by the State Board of Education." There is some sentiment among special education administrators that operating a program under the "group" category allows for more flexibility, and certainly provides for allocation of some of the funds for overhead costs. Regardless, according to ISBE training materials on residency issues, children in such

facilities or homes are the responsibility of the local district if they live, sleep and eat in the district. There are some distinctions, however, between who is responsible for serving the students and who actually pays for the services.

### **Out of State Children Placed in Illinois**

There is a specific, rather innocuous paragraph in Section 14-7.03 that provides:

*Any child who is not a resident of Illinois who is placed in a child welfare institution, private facility, foster family home, state operated program, or orphanage or children's home shall have the payment for his educational tuition and any related services assured by the placing agent.*

It is clear that the statute intends for children placed by out of state agencies not to be served by Illinois school districts unless payment is assured. Thus, while the last paragraph of 105 ILCS 5/14-8.01 states that a school district must serve all children, it is clear that the Orphan's Act intends to insure that school districts must have out of state pupil's funding assured before they may educate these children placed by out of state agencies.

### **Children Placed Residentially by a State Agency or the Courts for Care/Custody**

The legislature has enacted a reimbursement provision for children placed residentially by a "state agency" or "the courts", for care or custody, or both care and custody, welfare, medical or mental health treatment, or both medical and mental treatment, rehabilitation, and protection. The statute says that "the costs for educating the student are eligible for reimbursement under this section **providing the placing agency or court has notified the appropriate school district authorities of the status of student residency where applicable prior to or upon placement.**" (emphasis added)

It is incumbent upon any placing agency, then, to ensure that the local school district where the receiving facility is located is "notified," preferably prior to placement, but in no instance later than immediately upon placement, that the child is now in that district. The district is then obligated to provide for the child, however, the child is not necessarily a bonafide "resident" of that district. In fact, it is clear that children placed by an "Illinois agency" or an "Illinois court" are likely continuing residents of the district *where their guardians are located*. This statute provides that if a child is placed in a particular district by an Illinois agency or Illinois court, the district where the child is placed is responsible to serve the child, *but the child does not thereby become a resident* of that district and instead, continues to be a resident of the district where the parent or guardian is located. Thus, in this category, districts where the child is located are obligated to serve, but do not become financially liable for serving, each qualified disabled child. Usually what happens is that the school district where the child is located begins serving a child and then commences sending bills to the district of residence. Occasionally, the district of residence balks at paying the bill sent by the district serving the child because, among other reasons, the district of residence was not fully "notified," or did not have a say in the placement. However, whether the district of residence had a say in the placement is not relevant for purposes of this statute. In fact, this issue was addressed in a 1999 case, Carbondale Community High School District #165 v. Herrin Community Unit School District #4. [2] In that case, a child was placed by an Illinois court at a Gateway facility in Carbondale. The Carbondale district immediately served the child and billed the Herrin school district for the costs. Herrin balked, indicating that they had previously expelled the child and therefore he had no right to services. The court indicated that the statute was clear, in that its purpose was to get the child out of the public school, which occurred in that case,

and to encourage the child to seek rehabilitation, which was also done. Thus, even though the child had been previously expelled from the district of residence, that district was still obligated to pay the Carbondale district serving the child while he was in the substance abuse program, through a *bonafide* order entered by an Illinois court.

There is an interesting dispute resolution process included in the statute for these children. The provision clearly states that “the district of residence of the parent, guardian, or disabled student as defined in Sections 14-1.11 and 14-1.11(a) is responsible for the actual costs of the student’s special education program and is eligible for reimbursement under this Section when placement is made by a state agency or the courts.” (emphasis added) The clause then goes on to say that payments must be made by the resident district to the district where the facility is located no less than once per quarter unless otherwise agreed in writing. When a dispute arises over the determination of the district of residence, there can be an appeal in writing to the State Superintendent. The decision of the Superintendent is final. There is also an ‘automatic’ clause for payment, providing that in the event that a district does not make a tuition payment to the district actually providing the special education services, “the State Board of Education shall immediately withhold 125% of the then remaining annual tuition cost from the state aid or categorical aid payment due to the school district that is determined to be the resident school district. All funds withheld by the State Board of Education shall immediately be forwarded to the school district where the student is being served.” (emphasis added) The Superintendent of Education for our state of Illinois is reportedly reluctant to use this provision.

### **“No Excuse” Provision â Special Education Safety Net**

At 105 ILCS 5/14-8.01, entitled “Supervision of Special Education Buildings and Facilities,” It is stated that “room

and board costs not provided by a state agency other than the State Board of Education **shall be provided by the State Board of Education to the extent of available funds.** (emphasis added). This an interesting “no excuse” provision, which is then repeated later in the same section, as follows:

*Special education and related services included in the child’s individualized educational program which are not provided by another state agency **shall be included** in the special education and related services provided by the State Board of Education and the local school district. (emphasis added)*

At the end of Section 5/14-8.01, there is also the following “safety net” provision:

*A school district is responsible for the provision of educational services for all school age children residing within its boundaries excluding any students placed under the provision of Section 14-7.02 or any disabled student whose parent or guardian lives outside of the State of Illinois as described in Section 14-1.11. (emphasis added)*

While this clause is located within Article 14, the language point to “all school age children” and makes no qualification that carves out special education pupils. Thus, Illinois school districts must serve all special education children who “reside” in a particular district, as that term is defined in Article 14. The “must serve” mandate also applies to children with substance abuse and alcohol problems who are not in the special education system:

*Educational services for Illinois students under the age of 21 in a residential program designed to correct alcohol or other drug dependency shall be provided by the district in which the facility is*

*located and financed as follows. The cost of educational services shall be paid by the district in which the student resides in an amount equal to the cost of providing educational services in a treatment facility. Payment shall be made by the district of the students residence and shall be made to the district wherein the facility is located no less than once per month unless agreed to by the parties.[105ILCS 5/10-20.12(a)] (emphasis added)*

Thus, even with children who are not identified as eligible for special education services, where a student is placed for chemical or alcohol dependence, the district where the student is located must serve the child, but is allowed to bill the district of residence for costs.

### **Application of the Law in Grey Areas**

Consider the following facts:

*A student is presented by his father for registration in school. Upon inquiry, it is determined that the boy was found to be under the jurisdiction of the Missouri Juvenile Court for the offenses of truancy, being habitually absent from home and assault. The boy was committed to the custody of the Missouri Division of Youth Services ("Division") for care and treatment. He then completed the residential portion of his treatment and was placed by the division into the physical custody of his uncle who lives in an Illinois school district. The mother resides in Missouri and has legal custody, through the Missouri divorce court, however the boy is currently in the legal custody of the division through the Interstate Compact. Until such time that the boy is discharged from the custody of the Division, they retain the lawful authority to place him. What is the boy's legal residence, and does*

*the Illinois school district have to serve him?*

Analysis:

It could be argued that the Missouri Juvenile court order trumps the divorce court order, because all states must give "full faith and credit" to out of state orders that don't conflict with the laws of the receiving state, and all juvenile courts have a broad mandate to fashion relief in the best interests of court wards. So, we need to treat the Missouri order the same as we would treat an Illinois court order entered in the best interests of the child. And since it is apparent that the order was not entered for the SOLE reason of the minor taking advantage of the benefits of Illinois' free schools, it is an order with which we can comply.

However, if this is a special education child, Section 14-7.03 might apply, and it says that *any child who is not a resident of Illinois who is placed in a foster family home shall have the payment for his educational tuition and any related services assured by the placing agent.* (emphasis added). The statute seems to allow Illinois districts to refuse to serve nonresident children whose costs are not covered by the out of state placing agency, and in this instance it is assumed this is the Missouri school district of residence. This position is strengthened by Section 14-1.11a(5) which says that *the resident district is the school district in which the student resident when an Illinois public agency has legal guardianship and has placed the student residentially outside of the school district in which the parent lives.* (emphasis added). Remember: this only applies to special education children. And here, an Illinois agency did not make the placement.

For non-special education pupils who are placed in substance or alcohol abuse programs, Section 5/10-20.12(a) says generally that the district where the child is located must serve the child but that district has the right to bill the

district of residence for the costs. One might inquire if substance/alcohol abuse was one of the reasons for placing the child with his uncle.

As is obvious, residency law is quirky. However, since the ISBE in its residency training materials for business managers says that any child who “lives, sleeps and eats” in the district generally must be served, our recommendation was to serve the child but notify the Missouri Juvenile court and the school district of the mother’s residence that they will be billed for the costs.

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## **APPENDIX “A” SAMPLE POLICY**

### **RESIDENCY POLICY**

It is the intent of the \_\_\_\_\_ Board of Education to provide a free education through the secondary level to all eligible pupils who legally reside within its boundaries, in the hope that all bona fide residents of the District will be afforded fair and equal access to educational services under the Illinois Constitution, and pursuant to state law and regulations. The term “residence” shall apply to the location where the student actually lives on a full time basis.

#### **I. RESIDENT STUDENTS**

##### **TUITION FREE EDUCATION**

A. The school district (“District”) shall provide a tuition free education to those students who are legally residing within the boundaries of the District. Except in the case of

students with special needs, students shall attend schools within residency areas to be determined by the District. Admission to the school within the residency areas shall be determined by the Superintendent or designee.

#### B. Determination of Residency

1. Parents or guardian seeking to enroll a child in school shall present at least three forms of evidence of residency to the principal or designee. These documents can include, but may not limited to, the following:

a. A current tax bill, utility bill, or other relevant documents that show that the persons through whom the student claims residency reside within the district.

b. A lease signed by the persons through whom the student claims residency, or a contract for sale of land with a closing date within 60 days or less of the beginning of the academic year.

c. A deed, Torrens Certificate, Land Sales Contract, title insurance policy, or other evidence of title showing that the persons though whom the student claims residency actually hold title to their residence within the district. If a land trust is involved, a lawyer's certification of beneficial title will be acceptable.

d. A valid driver's license or auto registration (city or state) showing that the persons though whom the student claims residency actually live within the district.

e. Voter's registration card.

f. A notarized statement, or affidavit signed by both the parents or legal guardian or other persons residing in the district, testifying that the student and his or her parent(s) or legal guardian(s) are living with them, for reasons other than the benefits of the public schools

within the district, and listing those reasons. (See attached affidavit Appendix "B").

2. An initial determination of residency shall be made by the superintendent or his designee.

### C. Criteria for Establishing Residency

The superintendent or designee of the school shall determine that the child is eligible for tuition free enrollment at the school based on one or more of the following:

1. That the parent or parents of the child are resident(s) within the district, but not solely for the purpose of attending the schools within that district.

2. That the legal guardian or guardians of the child are resident(s) within the district, but not solely for the purpose of attending the schools.

3. That the child resides with a non-parental guardian/custodian resident of the district, and that the parents are either deceased or have given up legal custody and control over the child for reasons other than enjoyment of the free educational programs within the District. In the latter instance, the custodian or legal guardian shall complete all forms as required by the relevant school district, including *In Loco Parentis* or statutory short term Guardianship forms or affidavits provided by the District. (See Appendix "B").

4. That the child is either partially or fully emancipated by court order under the Emancipation of Mature Minors Act, married, or at least 18 years of age, or married and residing in the district.

5. That the child is resident in a foster home or other institution within the district pursuant to a court order or action by the Illinois Department of Children and Family

Services, or pursuant to any action by any other State child welfare public agency.

6. That the child has been placed in a residential treatment center located within the district, and such child has been placed at such a center pursuant to a *bona fide* Juvenile Court order.

7. The child is considered "homeless" under the McKinney Act.

***NOTE:** For criteria 5 and 6, the duty of the district to provide tuition free education to the child will cease on the day of the child's discharge from the foster home or residential treatment center. District will bill the district of residence of parent or guardian for services provide, per (D) below, if a disabled student is involved.*

#### D. Special Education Students

For the purpose of serving special education students, a student, though not resident of the district, shall be deemed a resident of the district if the child resides within a district of the applicable joint educational cooperative. The co-op district of residence shall be responsible for all costs associated with the appropriate educational program of such students. The child shall, accordingly, be treated for residency purposes as if he or she resided within the school district.

## II. NON-RESIDENT STUDENTS

A. Pursuant to policy and procedure promulgated by the Board of Education of the District, and pursuant to state statute, non-resident students may be enrolled in district schools with the prior approval of the District Superintendent or his/her designee, and upon prompt advance or other payment of tuition to the district.

## B. Admission of Non-Resident Students

The District shall not deny enrollment to the following categories of pupil:

1. Non-resident students whose parents or guardians present a *bona fide* intent to move into the district during the course of the school term. The principal or designee of the school may require the parents or guardian to present evidence, such as a lease or contract to purchase real estate, showing that the parents or guardians are in the process of purchasing or renting a home or apartment in the district, not solely for the purpose of attending schools within the district. As required by statute, tuition shall be assessed for such enrollments from the first day of actual attendance until the date of actual residency.

2. If a resident student becomes a non-resident during the course of the school year, the student shall be allowed to remain within the school for the duration of the school year. The parents shall not be charged tuition for that period, pursuant to Illinois statute.

***NOTE:*** *For non-resident students admitted to District Schools, the school district shall under no circumstances assume responsibility for the transportation of these students.*

## C. Tuition

All **Nonresident** pupils admitted to district schools are required by statute to be charged tuition, except as indicated herein.. The amount of tuition shall be calculated at the per capita cost of maintaining the schools of the district for the preceding school year. The exact figure shall be provided by the Business Office.

## D. Payment of Tuition

1. Tuition shall be paid on a semester basis. Payment shall be made by the parents or guardian prior the first day of the semester.

2. In the case of non-resident students whose parents or guardians have proven intent of moving into the district, the district shall refund the proportionate amount of money to the parents upon establishing their in-district residency. Refunds will be based on the date of actual residency for the remainder of the school term.

#### E. Non-Payment of Tuition

1. If, by the first day of the semester, payment has not been received by the school district, the principal or designee shall give notice to the parents or guardians of the non-resident student that payment has not been made. The principal or designee shall then set forth an absolute deadline of ten (10) calendar days from the date of the notice to make the payment.

2. If the parents or guardians have then failed to make payment, the principal or designee will then follow district procedures for the exclusion of a private pay student.

#### F. Exclusion of Non-Resident Pupils

1. It is the policy of the District that Nonresident Private Pay Pupils, whether they are identified as eligible for special education or not, shall be treated the same as any private school student. That is, the procedural protections of the Individuals with Disabilities Education Act shall not apply, although Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act will apply. Specifically, any non-resident, private pay pupil may be discharged for any reason if not solely based on a *bona fide* disability condition, upon thirty-day written notice to parent or

guardian, or without prior notice if the pupil presents a danger to other students and/or staff.

### **III. PROCEDURES UPON ENROLLMENT**

A. Within 45 days after admission to the district, the parents and/or student shall complete and submit the following forms:

1. Enrollment form
2. Health and Immunization forms
3. Emergency Notification form
4. Dental forms (at the option of the district).

Failure to submit these documents may require the student to submit to a physical examination or face immediate exclusion from the school.

B. In addition, the parents or guardians shall make available a certified copy of the pupil's birth certificate or a Lost Certificate Affidavit to the principal or designee within thirty (30) days of the initial date of enrollment.

C. Failure to comply with the aforementioned procedures may result in the child's immediate exclusion from school.

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### **APPENDIX "B" SAMPLE AFFIDAVIT**

STATE OF ILLINOIS

#### **AFFIDAVIT OF TRANSFER**

#### **OF CUSTODY, CONTROL AND RESPONSIBILITY**

(I) \_\_\_\_\_ having first been sworn upon (my) (our) oath depose and state the following:

That (I am) the parent(s) of \_\_\_\_\_ age \_\_\_\_\_, and that (I) hereby willingly and voluntarily transfer full custody, control and responsibility of said minor to \_\_\_\_\_ whose residence is \_\_\_\_\_ (street address) City \_\_\_\_\_ County, Illinois, within the territorial boundaries of \_\_\_\_\_ School District, # \_\_\_\_\_, \_\_\_\_\_ County, Illinois. That said transfer is not solely for the purpose of attending the schools thereof. That (I) understand that while advice and consultation may be given, all decisions regarding this minor shall be made by \_\_\_\_\_.

FURTHER YOUR AFFIANT SAYETH NOT.

\_\_\_\_\_

Signature(s)

\_\_\_\_\_

Street Address

\_\_\_\_\_

City, State, Zip Code

\_\_\_\_\_

Telephone Number

Subscribed and sworn to me before this

\_\_\_\_\_ day of \_\_\_\_\_, 2002

\_\_\_\_\_

Notary Public

**Any person who knowingly enrolls or attempts to enroll on a tuition-free basis whom the person knows to be a non-resident, or willfully presents false information regarding the residency of a pupil shall be guilty of a Class C misdemeanor, punishable by a fine of not more than \$500 and imprisonment of not more than 30 days.**

\_\_\_\_\_

[1] This refers to a joint agreement between school districts to pool their resources for the purpose of providing special education services. See 105 ILCS 5/10-22.31.

[2] 303 Ill.App.3rd 656, 708 N.E.2nd844, 134 Educ.L.Rep.538