

## **REGISTRATION GUIDANCE**

### **RESIDENCY, IMMIGRANT PUPILS, HOMELESS PUPILS AND SCHOOL FEES & WAIVERS**

The summer is once again drawing to a close and as we prepare for pupils to register for a new school year, we want to take this time to discuss four areas that traditionally have generated confusion: **Residency, Immigrant Pupils, Homeless Pupils and School Fees & Waivers.**

#### **I. Residency (for non-special education pupils)**

School districts are concerned about registering or enrolling pupils that cannot produce documented proof of residency in the school district. To help combat some confusion at registration, we have some guidance that explains all the areas of residency for non-special education pupils. [Residency for special education pupils is generally based on guardianship. See 105 ILCS 5/14-1.11 and 5/14-1.11a; see also 23 Ill. Admin. Code 226.]

Some districts designate particular days for registration; nonetheless, if a resident presents him- or herself to register a pupil on a day other than those designated, the district must still permit the registration.

**General Rule of Residency: *The residence of a person who has legal custody of a pupil is deemed to be the residence of the pupil. Legal custody for residency & enrollment DOES NOT mean guardianship.***

Determining a pupil's residence all comes down to what "legal custody" means. "Legal custody", for the sole purpose of determining the residency of a pupil and enrolling him or her in school, is defined 5 ways in Section 10-20.12b(2), as subsections (i) through (v). The task of the registrar and the adult enrolling the pupil is to determine which 1 of the 5 situations most clearly reflects the reason the pupil lives in the district:

- (i) If the pupil lives with his or her natural or adoptive parents, the pupil is a resident of the school district in which his or her natural or adoptive parents live.
- (ii) If a court has granted custody, not guardianship, to an adult with whom the pupil lives, then the pupil is a resident of the district in which that adult lives, *as long as the pupil is not living with the adult for access to the educational programs of the district.*
- (iii) If an adult has been granted short-term guardianship, then the pupil is a resident of the district in which that adult lives, *as long as the pupil is not living with the adult for access to the educational programs of the district.* An adult's written appointment of short-term guardianship is sufficient to enroll a student under 105 ILCS 5/10-20.12b of the School Code. The adult is required to obtain a court order granting permanent guardianship within 60 days of enrollment of the pupil; however, failure to do so should not be grounds to disenroll the pupil.
- (iv) If the pupil lives with an adult relative caretaker receiving aid under the Illinois Public Aid Code for that pupil, then the pupil is a resident of the district in which that adult lives, *as long as the pupil is not living with the adult for access to the educational programs of the district.*

For subsections (ii), (iii) and (iv), documentation provided by the court or the State is sufficient to prove the relationship with the child.

- (v) If the pupil lives with an adult who has accepted responsibility for the pupil and provides a fixed nighttime abode for the pupil, then the pupil is a resident of the district in which that adult lives, *as long as the pupil is not living with the adult for access to the educational programs of the district.*

Subsection (v) is a "catch-all" provision, designed to cover residency situations that do not fit into one of the above four definitions. If provision (v) applies, ISBE encourages use of the attached Affidavit of Enrollment and Residency (ISBE Form 85-51) [http://www.isbe.net/accountability/pdf/85-51\\_affidavit.pdf](http://www.isbe.net/accountability/pdf/85-51_affidavit.pdf); or

[http://www.isbe.net/accountability/pdf/85-51\\_affidavit-S.pdf](http://www.isbe.net/accountability/pdf/85-51_affidavit-S.pdf) (Spanish) as proof that the pupil is a *bona fide* resident of the school district.

Questions about residency? Please contact ISBE at (217) 782-2948.

## II. Immigrant Pupils

**Please review your district's enrollment policy to ensure it is consistent with applicable laws, including the guidance outlined here.** In the past few weeks we have received a number of calls concerning the enrollment of immigrant students. The following information is provided to help you fulfill administrative duties without infringing upon children's educational rights.

**The immigration status of the parent or child has no bearing on the rights of the students to enroll.** The laws of Illinois and the United States guarantee all students, including undocumented immigrant students, access to a free public education through grade twelve up until the age of twenty-one regardless of immigrant status. This requires every district to guarantee all immigrant students equal access to the full range of programs and resources.

**Districts enrollment procedures might violate immigrant students' right to equal educational access.** Immigrant students are entitled to the same access as nonimmigrant students. Equal access is influenced by admission policies adopted at the district level and implemented at the school level. The law prohibits any action which might have a "chilling" effect on the right of access to schools. Districts must not inquire about the immigration status of a student or parent; and they must not require parents or adult care-takers to provide any information concerning their or their children's immigration status. When implementing residency policies, care must be taken to ensure that parents or adult caretakers can establish residency within the district by means which will not force them to, albeit indirectly, reveal their immigration status. Furthermore, "the documents required by a school system as proof of residency for a student, when taken together, shall not result in a requirement for proof of legal presence, such as Social Security number. That is, the permissible combination of documents must be sufficiently variable to afford an opportunity for those who lack proof of legal presence or immigration status to meet the state requirements." (See 23 Ill. Admin. Code 1.240(b)).

**Policies or procedures which condition services or benefits by requiring a child's or a parent's Visa, Green Card, Illinois driver's license, or Social Security number must be immediately modified because these practices have the effect of infringing the rights of undocumented students.**

School districts should continue to determine whether a student resides in the district, but do not have a right to delve into a child's immigration status and indeed pursuant to a 1981 United States Supreme Court case and Part 1.240 of the 23 Illinois Administrative Code, should not. (See *Plyler v. Doe* and 23 Ill. Admin. Code 1.240(b)). Thus, districts may not require that parents or adult caretakers provide either a Visa, "Green Card," Illinois driver's license, a state identification card or other documents which require Social Security numbers.

**Districts cannot impose requirements for enrollment more restrictive than those established under relevant Illinois and federal law.** Districts must not apply inflexible rules to determine residency. A district may accept as proof of residency, but cannot mandate, that parents or adults caretakers provide any particular document such as a lease, mortgage documentation, Driver's License, or State Identification Card. The documents required by a district as proof of residency must be sufficiently variable to allow any resident to meet the stated requirements.

**Residence in the school district is sufficient to entitle school age immigrant children, including foreign exchange students, to attend school on a tuition free basis.**

Once an immigrant student of proper age and residency seeks admission to school in the district, the student has an immediate legal right to attend school on a tuition-free basis with other students. The only factor in determining whether to charge tuition should be whether or not the child is a resident in that school district under Section 10-20.12b(a) of the School Code. The residence of the parents or other proper enrolling

custodian is considered to be the residence of the minor child. Residency may be established with information documenting 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 (gas, electric, water, home telephone, cable television, etc.), residential property tax statement, mortgage account or proof of home ownership, major credit card bill, canceled checks with imprinted name and address, vehicle title or registration card, installment loan contract from bank or other financial institution, residential service contract (services performed at the residence, e.g., appliance repair, exterminator, window installation, etc.), pay check or pay stub, insurance policy (life, home, auto, or health), checking or savings account statement, third person affidavit of residency (landlord or homeowner), etc.

**Districts cannot mandate adult caretakers or relatives with whom a child lives to establish legal guardianship as a condition for gaining access to the district's schools.**

It is not uncommon, among immigrant families, to find children who do not live in the same household as their parents. To safeguard immigrant students' right to a free public education, LEAs must not conclude that children, who live within the district, but apart from their parents, must be charged tuition as if they were non-residents. A student 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.

When it's undisputed that a child resides in the district, but questionable whether the child lives apart from the parent simply to access educational programs, districts must not apply inflexible rules to determine residency. Districts cannot mandate adult caretakers or relatives with whom a child lives to establish legal guardianship as a condition for gaining access to the district's schools. Districts may require reasonable assurance from the responsible adult caretaker that they accept responsibility for the child and that while exercising control, care and support over the child, they will provide him with a regular fixed night-time abode. This may be done through a letter or affidavit. ISBE, in the Accountability website, has an attestation of residency that may be used for this purpose.

**Social Security numbers are not required to determine eligibility for any education benefits (including pre-K services) or other benefits such as free or reduced lunch.**

Schools are required to provide undocumented immigrant students the same benefits and services made available to other students. Therefore, when determining eligibility for services, including the free/ reduced lunch and/or breakfast programs under the School Lunch Act, they should not reject applications which do not have the parent's Social Security number. Parents without Social Security numbers need only indicate on the application that they do not have a number. When applicable, districts must make it clear that any and all information provided is used solely to obtain federal funds.

**LEA's have no legal right or obligation to enforce immigration laws.**

Upon enrolling immigrant students, district personnel should never contact (or threaten to contact) the Department of Homeland Security. Reporting students' immigration status to immigration authorities can be a violation of the Family Educational Rights and Privacy Act and the Illinois School Student Records Act. Conversely, the Department of Homeland Security has no legal authority to determine or infringe on district residency policies.

**Funds may be available for districts with a large influx of immigrant students.**

Districts heavily affected by an increase of immigrant students may qualify for Immigrant Education Program funds through the State Board. Districts may also be eligible for funding through the State Transitional Bilingual Education Program for limited English speakers or the federal Title III program. Contact 312-814-3850 to inquire about the availability of funds under these programs or visit [www.isbe.net/bilingual/htmls/consolidated\\_application.htm](http://www.isbe.net/bilingual/htmls/consolidated_application.htm)

### III. Homeless Pupils

ISBE considers the school enrollment, attendance and success of homeless children and youth throughout Illinois a high priority. When responding to residency questions, districts need to think about whether the pupil at issue may be homeless as defined under federal (McKinney-Vento Act, 42 U.S.C. 11431) and Illinois (the Illinois Education for Homeless Children Act, 105 ILCS 45/1-1, or "IEHCA") laws. Under both Illinois and federal law, school districts have an affirmative duty to identify homeless families within the district. Each school district's homelessness liaison must be involved to provide assistance to families who may be homeless, so that they are aware of their right to enroll their child(ren) in school.

Homeless pupils include, but are not limited to, children or youth sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (commonly referred to as being "doubled up") and pupils who are otherwise not residing in a fixed, regular and adequate nighttime residence. A homeless pupil must be immediately enrolled in any of the following:

- (a) the school in which he or she was enrolled when permanently housed (also known as the "school of origin");
- (b) the school in which he or she was last enrolled; or
- (c) any public school that non-homeless students who live in the attendance area in which the homeless pupil is living are eligible to attend.

School districts can best assist homeless families by:

- Insuring that school forms, brochures, web sites, handbooks, and instructional materials reflect accurate information about homelessness and residency rights, and are easily accessible.
- Training all staff, board members, and administrators responsible for school enrollment on Illinois and federal residency and homeless laws.
- Insuring that the homeless education liaison is involved any time a child's residency is questioned, *before* a residency hearing has occurred or the child is disenrolled.
- Collaborating with local free and low-cost legal services programs to insure that school district personnel are educated and that parents are provided with assistance.

There is no specific time limit on how long a child or youth can be considered homeless. Whether a child or youth meets the definition of being homeless depends on their living situation and individual circumstances. As already noted, if a pupil is (or that pupil or his or her parent or guardian claim the pupil is) homeless, districts must immediately enroll the pupil and also arrange for transportation and other services as appropriate.

If a district disputes that a pupil is homeless, the district must not engage in residency proceedings, but in dispute resolution procedures as dictated by McKinney-Vento and the IEHCA. The ISBE Homelessness Policy is available online at <http://www.isbe.net/homeless/pdf/policy.pdf> and other resources can be found at <http://www.isbe.net/homeless/default.htm>.

Please contact Marica Cullen at **(217) 782-2948** with questions about homeless pupils.

#### IV. School Fees and Fee Waivers

During registration and throughout the school year, school districts must be aware of families who believe that they are unable to afford school fees. Sections 10-20.13 and 34-21.6 of the School Code (105 ILCS 5/10-20.13 and 105 ILCS 5/34-21.6) require that charges for textbooks and other fees be waived for children whose families are unable to afford them, including children eligible for the federal free lunch and breakfast program and for any other extenuating circumstances for which the school board will waive fees (e.g., reduced-price lunch or medical emergencies). Each district must adopt a written policy and administrative procedures governing fee waivers; requirements for those policies are found at 23 Ill. Admin. Code 1.245. Click here for a list of waivable fees: <http://www.isbe.net/rules/archive/pdfs/oneark.pdf> (23 Ill. Admin. Code 1.245(b)(1))

Many of you may remember that the criterion to qualify for a fee waiver was changed in 1989 by P.A. 86-195 from receipt of public aid to **eligibility for free lunch and breakfast**. School districts should ensure that those parents who do not wish to apply for the free lunch and breakfast program have the opportunity to request that their pupils' textbook and instructional materials fees be waived. Families may, but are not required to, show that they are recipients of aid under the Illinois Public Aid Code in order to have their fees waived. A family requesting a fee waiver must only provide evidence that it meets the income guidelines below, during **2009-2010**.

NOTE: For students whose fee waiver is based on their application for free or reduced-price meals under the School Breakfast Program and/or the National School Lunch Program, fee waiver verification may only be conducted within the limitations of 42 USC 1758. School districts that employ an application process that is separate and apart from the federal meals program may conduct verifications of a student's eligibility for a fee waiver no more than every 60 days, provided that the student's free or reduced-price meals status is not affected. See

<http://www.ilga.gov/legislation/BillStatus.asp?DocNum=475&GAID=10&DocTypeID=HB&LegId=40830&SessionID=76&GA=96>.

Information regarding school meal programs can be found at <http://www.isbe.net/nutrition/default.htm> and the complete **2009-2010** eligibility guidelines under "Income Eligibility Guidelines" at [http://www.isbe.net/nutrition/pdf/income\\_guidelines\\_10.pdf](http://www.isbe.net/nutrition/pdf/income_guidelines_10.pdf).

#### FISCAL YEAR 2010 INCOME ELIGIBILITY GUIDELINES

The United States Department of Agriculture has issued the following income guidelines for the period July 1, 2009, through June 30, 2010:

Household Size	Free Meals 130% Federal Poverty Guideline					Household Size	Reduced-Price Meals 185% Federal Poverty Guideline				
	Annual	Monthly	Twice Per Month	Every Two Weeks	Weekly		Annual	Monthly	Twice Per Month	Every Two Weeks	Weekly
1	14,079	1,174	587	542	271	1	20,036	1,670	835	771	386
2	18,941	1,579	790	729	365	2	26,955	2,247	1,124	1,037	519
3	23,803	1,984	992	916	458	3	33,874	2,823	1,412	1,303	652
4	28,665	2,389	1,195	1,103	552	4	40,793	3,400	1,700	1,569	785
5	33,527	2,794	1,397	1,290	645	5	47,712	3,976	1,988	1,836	918
6	38,389	3,200	1,600	1,477	739	6	54,631	4,553	2,277	2,102	1,051
7	43,251	3,605	1,803	1,664	832	7	61,550	5,130	2,565	2,368	1,184
8	48,113	4,010	2,005	1,851	926	8	68,469	5,706	2,853	2,634	1,317
For each additional family member, add	4,862	406	203	187	94	For each additional family member, add	6,919	577	289	267	134

**Notification to Parents.** Each school district must notify all parents of its fee waiver policy at the time the parents first enroll their child(ren) in school. Additionally, the first bill sent each school year to parents who owe fees must state that the district waives fees for parents unable to afford them in accordance with the district policy and must provide the name, address, and telephone number of the person to contact about fee waivers.

A district may, by policy, waive fees other than for textbooks and instructional materials. Parents should be informed of all fees waived by the district's policy.

**Punishment or Discrimination Prohibited.** Section 28-19.2 of the School Code (105 ILCS 5/28-19.2) prohibits punishment or discrimination of *any kind* against a student whose parents are unable to purchase required textbooks and instructional materials or to pay required fees. This prohibition includes the lowering of grades, exclusion from classes, withholding of diplomas and exclusion from graduation ceremonies.

However, a school may elect to send only the unofficial transcript for a transfer student when the student has unpaid fees. See 23 Ill. Admin. Code 375.75(h). The transferring school may refuse to send the official transcript until fees are paid or payment arrangements have been made.

In addition, districts may, if authorized by their discipline policy, discipline students for failure to pay for items not meeting the definition of a "school fee" as listed under Section 1.245(b)(2):

- Library fines and other charges made for the loss, misuse or destruction of school property;
- Charges for the purchase of class rings, yearbooks, pictures, diploma covers or similar items;
- Charges for optional travel undertaken by a school club or group of students outside of school hours;
- Charges for admission to school dances, athletic events or other social events; and
- Optional community service programs for which fees are charged.