

## APPENDIX K

### DETERMINING A STUDENT'S RESIDENT DISTRICT FOR STUDENTS WITHOUT A DISABILITY (NO IEP/IFSP/IIIP)

Generally, students without a disability are considered residents of where they reside with the parent/legal guardian. However, many students live with other than their parent/legal guardian. The district of residence must be determined to accurately calculate general education revenue, other state aids, levy authority and, in many cases, determine responsibilities for tuition.

#### Definitions

For purposes of this document, **without a disability** means that the student does not have an IEP (Individual Education Program), IFSP (Individual Family Service Plan) or IIIP (Individual Interagency Intervention Plan). Students in evaluation-only status or who have a 504 Plan do not have an IEP and these provisions apply.

A **foster home** is usually a typical home where there is a family providing care and nurturing for a child or two who are not of the family. Foster homes do not have employees to provide the care and nurturing.

A **foster facility** is a group facility where employees provide care and nurturing/treatment for the residents. Foster facilities typically have eight or more individuals who are placed in the facility by Human Services or other agencies.

When the parent is not available or their whereabouts are unknown, then there could be a **guardianship** or **conservatorship** in place to determine the district of residence. **Typically a conservatorship** is issued by a judge for students who are at the age of majority (ages 18-21). If the parent's location is not known or the parent resides out-of state, then a conservatorship issued by a Minnesota court would apply; the resident district would be the district in which the conservator lives.

A **guardianship** is issued by the courts when the parent is not known or when the child is in protective custody. If the parent's whereabouts are not known and a Minnesota court has appointed a guardian then the physical location of the guardian may be used to determine residency of a student. A court needs to approve a guardianship for it to be used in residency; **a notarized statement by the parents without court approval is not a legal guardianship to determine residency.**

If the student is a **ward of the state**, then the **guardianship** does not apply as the student is a resident of the district where the student resides.

**Parent**, in this document, means the biological or adoptive parent of the student. There are times when parental rights have not been terminated and a court appoints a guardian or conservator. In this case, for purposes of tuition, e.g., care and treatment, the parent's residence determines the student's residency. However, if the parent resides outside Minnesota or their rights have been terminated, the resident district is where the guardian or conservator lives.

#### Error in Residency

Minn. Stat. § 120A.22, Subd. 3(e)(2009):

*(e) If a district reasonably believes that a student does not meet the residency requirements of the school district in which the student is attending school, the student may be removed from the school only after the district sends the student's parents written notice of the district's belief, including the facts upon which*

*the belief is based, and an opportunity to provide documentary evidence of residency in person to the superintendent or designee, or, at the option of the parents, by sending the documentary evidence to the superintendent, or a designee, who will then make a determination as to the residency status of the student.*

### **Examples**

The following examples may be used in determining the resident district of a student without a disability.

#### **Reside With Parent**

1. Students without a disability living with their parents/legal guardians are considered residents of the district in which their parents/legal guardians live. See Minn.Stat. §120A.20, Subd. 1 (2006). A post office box does not establish residency, a physical address is needed with the exception of families in the Safe at Home program. See #2.
2. Safe at Home is a program by which eligible families' mailing address is a post office box in St. Paul. Participating families need not provide a complete physical home address but they must provide enough of an address to verify the school district in which they live for purposes of enrolling in school. Participants are issued an identification card by the Secretary of State's office that can be shared with the school district verifying that the family is a Safe at Home participant.
3. Students who live with parents outside Minnesota are considered non-Minnesota residents for purposes of generating state aid. (SAC 15) This includes extended family trips. For example, students traveling outside Minnesota who want to take online learning (OLL) courses are considered non-Minnesota residents while they are outside Minnesota and are ineligible to generate Minnesota state aid.
4. Students who are not physically living in Minnesota are non-Minnesota residents for purposes of generating state aid. (SAC 15) This includes students who are living in other states or as foreign exchange students in another country.

#### **Homeless**

The designation of homelessness should be made by the district's or charter school's Homeless Liaison.

5. Homeless students without a disability who are living in a shelter are considered residents of the district in which the shelter is located. See Minn.Stat. § 120A.20, Subd. 2 (2006). The designation of homelessness should be made by the district's or charter school's Homeless Liaison.
6. Homeless students without a disability who are not living in a shelter are considered residents of the district in which the student enrolls. If the enrolling school is a charter school, joint powers cooperative, one of the State Academies or Perpich School for the Arts, and the student is not living at the school, the resident district is that in which the enrolling school is located. See Minn.Stat. §127A.47, Subd. 2 (2009). The designation of homelessness should be made by the district's or charter school's homeless liaison.

#### **Divorced Parents/Shared Custody**

7. Students without a disability and whose parents are divorced are considered residents of the district in which the students primarily reside with the parent for the greater part of the school year.
8. Parents who share joint physical custody of students without a disability are responsible to designate the district of residence. On the days during which the student is physically in the nonresident district,

the parent is responsible for transporting the student to the border of the resident district. See Minn.Stat. §127A.47, Subd. 3 (2009).

### **Wards**

9. Students without a disability who are wards of the state of Minnesota and who are living in a foster home or foster facility and are enrolled in a Minnesota school district, are residents of the district in which they live. Minn.Stat. §125A.51 (b) (2009). (Parental rights have been terminated.) When parental rights have been terminated or permanently suspended through the Minnesota-based Tribal courts, students are considered Wards of the state and are residents of the district in which they live. When the parental rights are terminated and the student is living in a foster facility, the district may be eligible for full state funding under Minn.Stat. §125A.75, Subd. 3 (2007).
10. Students without a disability who are wards of a Minnesota county are usually in protection and parental rights have not been terminated. Students are residents of where the parent lives. Districts need to verify the parent's status with county Human Services. However, if parents move outside of Minnesota after the county takes custody, the student is a resident of the district in which the student is living because the state of Minnesota has taken control of student.
11. Students without a disability and who are wards of the state of Minnesota and are placed out-of-state for care and treatment by a Minnesota court or Department of Human Services (DHS) are usually residents of the last district to provide education. (Parental rights have been terminated; this also includes parental rights terminated or permanently suspended through the Minnesota-based Tribal courts.) The district is eligible for full state funding under Minn.Stat. §125A.75, Subd. 3 (2007).

### **Foster**

12. Students without a disability placed in a foster home by a Minnesota agency are residents of the district in which the student resides. This includes prekindergarten children who are evaluated for special education services. Until the prekindergarten foster children have an IEP, they do not have a disability and are residents of the district in which the foster home is located.
13. Students without a disability placed in a foster home by a Minnesota agency and then whose parents subsequently move out of the state of Minnesota are considered residents of the district in which the student resides because the state has taken control of the student's care and nurturing.
14. Students without a disability placed in a foster home or foster facility by a non-Minnesota agency are considered non-Minnesota residents. (SAC 15) Prior to accepting students from outside Minnesota, foster facilities must determine who will be responsible for the student's instructional costs.

### **Parent Choice**

15. Students without a disability who live with other than the parent/legal guardian and are not in a foster home or foster facility are residents of the district in which the parent/legal guardian lives, except as noted below in examples 16 and 17. The parent may have provided a notarized statement giving the adult with which the student is living power of attorney, but unless the courts made the placement, the notarized statement only gives the non-parent adult access to the student's educational records. The notarized statement does not constitute residency for purposes of a public education in that district. The parents may be charged tuition.
16. Students without a disability who transfer through an attendance option program to a nonresident district and are subsequently enrolled in a third district (e.g., Area Learning Center) are residents of the district in which the parent/legal guardian resides. Minn.Stat. §120A.20, Subd. 1 (2006).

### **Attorney General's Opinion**

17. Students without a disability who live with other than the parent/legal guardian are residents of where the students reside if all of the following criteria are met:
- a. Receive financial, emotional, medical, food, clothing, shelter, etc., support from the person(s) with whom they live,
  - b. Do not spend weekends and/or summers with the parent/legal guardian, and
  - c. Are not living in the district solely to receive a public education in that district.

Refer to the 1985 Attorney General's Ruling.

### **Emancipated Youth**

18. Students without a disability and considered as emancipated (self supporting) youths are residents of the district in which they live. See Minn.Stat. §120A.20 (2006).

### **Foreign Students**

19. Undocumented aliens are entitled to enroll in school and generate state aid per federal law. It is a violation of federal law to request a student's immigration/visa status. See Plyler vs. Doe. These students are considered residents of the district in which they live.
20. Students without a disability enrolled in the district with a J-1 visa through a registered cultural exchange program are considered residents of the district that enrolls the student. (SAC 02) See Minn.Stat. §126C.05, Subd. 2 (2009). For a list of registered programs go to the following web site: <http://www.sos.state.mn.us/student/student.html>. If the enrolling district is a charter school, one of the State Academies, a joint powers school or Perpich School for the Arts, the resident district is the district in which the school is geographically located. The enrolling school would be aware of the visa because of paperwork that precedes the student's enrollment.
21. Students without a disability enrolled in the district with a J-1 visa through a cultural exchange program that is *not* registered with the Secretary of State's Office are considered non-Minnesota residents. (SAC 15) See Minn.Stat. §126C.05, Subd. 2 (2009). For a list of registered programs go to the following web site: <http://www.sos.state.mn.us/student/student.html>. The enrolling school would be aware of the visa because of paperwork that precedes the student's enrollment.
22. Students without a disability enrolled in the district with an F-1 visa are considered foreign students and are considered non-Minnesota residents. Federal law requires the enrolling school charge full tuition for these students. (SAC15) The enrolling school would be aware of the visa because of paperwork that precedes the student's enrollment.
23. Students in Minnesota under a B (visitor's visa) are considered non-Minnesota residents (SAC 15) even though they may be here with a parent. It is a violation of federal law to request a student's immigration/visa status. Therefore, it will only be known that the student has a visitor's visa if the family volunteers the information. If the school does not enroll the student, it may allow the student to visit the school and participate in some of the activities, but the student would be ineligible to generate state aid.

### **Care and Treatment Placements**

Care and treatment is defined in Minnesota Rule 3525.2325, Subp. 1D:

*For purposes of this part, pupils and regular education students placed in the following facilities*

*by someone other than the district are considered to be placed for care and treatment:*

- (a) chemical dependency and other substance abuse treatment centers;*
- (b) shelter care facilities;*
- (c) home, due to accident or illness;*
- (d) hospitals;*
- (e) day treatment centers;*
- (f) correctional facilities;*
- (g) residential treatment centers; and*
- (h) mental health programs.*

24. Students without a disability temporarily placed for care and treatment in either a day program or a residential facility are residents of the district in which the parents/legal guardians live. See Minn.Stat. §125A.51(a) (2009) and Minn. R. 3525.0210, Subp. 39 (2009).
25. Students without a disability who are placed by a Minnesota agency into a care and treatment facility are residents of where the parent lives, even if the parent is in a correctional or treatment facility or in a homeless shelter.
26. Students without a disability who are placed for care and treatment in either a day program or a residential facility and whose parents are homeless are residents of where the parent is living.
27. Students without a disability temporarily placed by a Minnesota agency in a Minnesota care and treatment facility and whose parents subsequently move outside Minnesota are considered residents of the district in which the care and treatment facility is located.
28. Students without a disability who are placed in a Minnesota care and treatment facility by an entity outside Minnesota are considered non-Minnesota residents. The entity placing the students is responsible for assuring tuition is covered. (SAC 15). Tuition agreements should be arranged prior to the placement.
29. Students without a disability who are wards of another state placed into a Minnesota district are considered non-Minnesota residents. (SAC 15) The placing agency is responsible for the instructional costs and agreements should be in place prior to the placement.
30. Students without a disability placed by a Minnesota agency into a care and treatment facility outside of Minnesota and whose parents reside outside Minnesota are considered residents of the district that last provided education or the district designated by the Commissioner. (*pending*)
31. Students without a disability, who are placed by a Minnesota agency into a care and treatment facility and whose parent is homeless are residents of the district in which the parent resides.
32. Students without a disability, who are placed by a Minnesota agency into a care and treatment facility and whose parent is homeless and cannot be located are residents of the district in which the facility is located.
33. Students without a disability who transfer through an attendance option program to a nonresident district or charter school and are subsequently placed for care and treatment (third district) are residents of the district in which the parent/legal guardian resides. See M.S. §125A.51 (2009). The student is eligible to return to the attendance option district or charter school upon completion of the placement.

34. Irrespective of which parent has legal custody, the district in which the parent who has physical custody resides is considered the student's resident district. If parents have joint physical custody the parents must designate the district of residence. See Minn. R. 3525.0210, Subp. 39 (2009) and Minn.Stat. §127A.47, Subd. 3 (2009).

**Parent Placed for Treatment**

35. Students without a disability that lives with a parent and the parent has been placed in a residential treatment program are residents of the district in which the parent's treatment program is located.
36. Students without a disability who are placed for care and treatment and meet the following criteria are considered residents of the district in which the parent/legal guardian lives Minn.Stat. §120A.22 subd. 3c (2006):
- a) are age 18 or older; and
  - b) are unmarried; whether or not they are a parent.

**Placed for Treatment Outside Minnesota by Parent**

37. Students without a disability placed by the parent for care and treatment outside Minnesota are ineligible to generate state aid and would not be reported on MARSS. The resident district is not responsible for instructional costs.

**Married Students Placed for Treatment**

38. Students without a disability who are age 18 or older, married and are placed for care and treatment are considered residents of the district in which the students reside. See Minn.Stat. §120A.22, Subd. 3(d) (2009).
39. Students without a disability who are under age 18 and married and are placed for care and treatment are considered residents of the district in which the parents reside.