

TECHNICAL ASSISTANCE ADVISORY

RESIDENCY

Purpose.

The purpose of this Technical Assistance Advisory is to clarify existing law with respect to a pupil's district of residency and school district liability for educational costs when a child is placed in a home for children; the home of a relative or friend by the Department of Health and Human Services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463; health care facility; or state institution.

Definitions. The following definitions shall apply:

- (a) "Legal residence" means, in the case of a minor, where the parents reside, except:
 - (1) If parents live apart and are not divorced, legal residence is the residence of the parent with whom the child resides.
 - (2) If parents are awarded joint legal custody the legal residence of a minor child is the residence of the parent with whom the child resides.
 - (3) If a parent is awarded sole or primary physical custody, legal residence of a minor child is the residence of the parent who has sole or primary physical custody.
 - (4) If the parent with sole or primary physical custody lives outside the state of New Hampshire, a minor child does not have residence in New Hampshire.
 - (5) If the parents are awarded joint or shared physical custody legal residence of a minor child is the residence of whichever parent has primary physical custody. If primary physical custody is not awarded by a court of competent jurisdiction the legal residence of a minor child is the residence of the parent with whom the child resides more than 50% of the school week, or 3 days out of the 5-day school week.
- (b) "Legal guardian" means a person appointed by a probate court in New Hampshire or a court of competent jurisdiction in another state, territory, or country. A legal guardian shall not be appointed solely for the purpose of allowing a pupil to attend school in a district other than the district of residence of the minor's parent or parents.
- (c) "Legal resident" as defined in RSA 193:12, III means:
 - (1) Legal resident of a school district is "a natural person who is domiciled in the school district and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent.
 - (2) A married person may have a domicile independent of the domicile of his or her spouse.
 - (3) If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some

- future time.
- (4) A person may have only one legal residence at a given time.”
- (d) “Home for children or health care facility” means any
- (1) Orphanage;
 - (2) Institution for the care, treatment, or custody of children;
 - (3) Child care agency as defined by RSA 170-E: 25, II and III;
 - (4) A residential school approved under RSA 186:11, XXIX; or
 - (5) A program approved pursuant to Ed 1133.
- (e) “Child of homeless parents” means a child whose parents:
- (1) Lack a fixed, regular and adequate residence; or
 - (2) Have a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations such as:
 - a. Public assistance hotels,
 - b. Emergency shelters,
 - c. Battered women’s shelters, and transitional housing facilities, or
 - d. A public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.
- (f) “Home of a relative or friend” means an unlicensed home of a relative or friend where a child has been placed by the Department of Health and Services or a court of competent jurisdiction. “Friend” means any non-relative.
- (g) “Legal custody” means an award of legal custody by a court of competent jurisdiction, in this state or in any other state. A parent shall not have legal custody if legal custody has been awarded to some other individual or agency, even if that parent retains residual parental rights.
- (h) “Placement” means the physical placement of a child in a residence. For purposes of assigning financial or programmatic responsibility for a child’s education or special education and related services, it shall not include incidental, transient, or short-term stays of an emergency nature.

Legal Residence and Right of Attendance.

- (a) No person shall attend school, or send a pupil to the school, in any district of which the pupil is not a legal resident, without the consent of the district or of the school board.
- (b) In accordance with RSA 189:1-a, “It shall be the duty of the school board to provide, at district expense, elementary and secondary education to all pupils who reside in the district until such time as the pupil has acquired a high school diploma or has reached age 21, whichever occurs first; provided, that the board may exclude specific pupils for gross misconduct or for neglect or refusal to conform to the reasonable rules of the school, and

further provided that this section shall not apply to pupils who have been exempted from school attendance in accordance with RSA 193:5.”

(c) “Whenever any child is placed and cared for in any home for children, or is placed by the department of health and human services in the home of a relative or friend of such child pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, such child, if of school age, shall be entitled to attend the public schools of the school district in which said home is located unless such placement was solely for the purpose of enabling a child residing outside said district to attend such schools, provided that the school district for a child placed in a group home, as defined in RSA 170-D:25,II(b), within a cooperative school district, shall be the cooperative school district.”

(RSA 193: 28)

Education of A Child Placed And Cared For In Any Home For Children.

(a) Nothing shall limit or abridge the right of any child placed and cared for in any home for children, as defined in RSA 193:27, to attend school in the district in which the home is located.

(b) Any child placed in the home of a relative or friend by the Department of Health and Human Services, or by a court pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, may attend the public schools of the school district in which the home for children or home of the relative or friend is located.

(c) Whenever a parent or guardian voluntarily places a child with a relative at the recommendation or request of the Department of Health and Human Services, that child shall be permitted to attend the public schools of the school district in which that relative resides provided that:

“Upon request of the school district, the Department of Health and Human Services shall confirm that the department recommended or requested that the child be placed with the relative to promote the child’s wellbeing, and not for the purpose of allowing the child to attend school in the district where the relative resides; and

Upon request of the school district, the relative shall take reasonable steps to secure a court award of guardianship over the child; the child being allowed to attend school in that district while the relative seeks guardianship.” (RSA 193:12,V,a)

“Upon request of the school district, the Department of Health and Human Services shall confirm that the department recommended or requested that the child be placed with the relative to promote the child’s well being, and not for the purpose of allowing the child to attend school in the district where the relative resides; and upon request of the school district, the relative shall take reasonable steps to secure a court award of guardianship over the child; the child being allowed to attend school in that district while the relative seeks guardianship.” (RSA 193:12,V,a)

Legal Guardianship

(a) Legal guardianship shall not be appointed solely for the purpose of allowing a pupil to attend school in a district other than the district of residence of the minor’s parent or parents.

- (b) Whenever a petition for guardianship or legal custody is filed in a court of competent jurisdiction on behalf of a relative of a child, other than a parent, the child shall be permitted to attend school in the district in which the relative of the child resides pending a court determination relative to custody or guardianship.
- (c) Upon the request of the school district, the relative shall take reasonable steps to secure a court award of guardianship over the child, and the child shall be allowed to attend school in that district while the relative seeks guardianship.
- (d) Any change of legal guardianship shall be filed with and approved by the probate court.
- (e) If guardianship papers are filed with the probate court, the pupil shall be entitled to attend school in the district in which the guardian resides.
- (f) Once guardianship is approved, the pupil shall be a resident of the school district in which the guardian resides.

Liability of School District for Special Education Costs.

- (a) If a child is:
 - (1) placed in a home for children, the home of a relative or friend by the Department of Health and Human Services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, or RSA 463, health care facility, or state institution; and
 - (2) the child is not in the legal custody of a parent or if the parent resides outside the state, then the school district in which a child most recently resided prior to such placement shall be liable for the cost of special education and related services. However, if the child is retained in the legal custody of a parent residing within the state, the school district in which the parent resides shall be liable for the cost of special education and related services.
- (b) If custody is transferred subsequent to the original placement of a child in a home for children, the home of a relative or friend in which a child is placed by the Department of Health and Human Services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, health care facility, or state institution, then the “sending district” shall be, from the change in legal custody or guardianship forwards, that district in which the child resided at the time of the original placement.
- (c) If a pupil 17 years of age or older, who is living independently, is placed in a non-residential facility by the Department of Health and Human Services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, the pupil shall be considered a resident of the school district in which he/she is living.
- (d) If a pupil 17 years of age or older is placed in a residential facility by the Department of Health and Human Services or a court of competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, the school district which was liable for the cost of special education and related services immediately prior to the pupil’s 17th birthday shall remain the school district of liability.
- (e) If a child is placed by the Department of Health and Human Services or a court of

competent jurisdiction pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463, and the parent resides outside the state of New Hampshire, the district of liability shall be determined in accordance with the interstate agreement.

Appeals: Residency

- (a) The superintendent shall decide all residency issues within a school district.
- (b) If more than one school district is involved in a residency dispute or the parents who live apart cannot agree on the residence of a minor child, the respective superintendents shall jointly make such decision.
- (c) In those instances when an agreement between superintendents cannot be reached within 10 days, the Commissioner of Education shall make a determination.
- (d) The Superintendents shall jointly submit to the Commissioner a written Request for Determination of Residency identifying the specific issues involved in the residency dispute.
- (e) The Commissioner, upon receipt of the written Request for a Determination of Residency, shall utilize the provisions of Ed 200, except that Ed 213 shall apply to a proceeding before the Commissioner.
- (f) A decision of the Commissioner of Education may not be appealed to the State Board of Education.
- (g) If the residency dispute does not involve more than one school district the dispute shall be resolved by the local school board. Such decision may be appealed to the State Board in accordance with Ed 200.
- (h) During the pendency of a determination of residency, a pupil shall remain in attendance in the pupil's current school.

Appeals: District of Liability

- (a) The State Board of Education shall determine the district of liability in disputes involving a special education child placed in the home of a relative of that child by the Department of Health and Human Services, or placed in the home of a relative or friend by a court pursuant to RSA 169-B, RSA 169-C, RSA 169-D, or RSA 463.
- (b) Such determination shall be made in accordance with rules adopted by the State Board of Education.

Non-residents.

- (a) No person shall attend school, or send a pupil to the school, in any district of which the pupil is not a legal resident, without the consent of the district or of the school board except as otherwise provided by law or a local school board policy.
- (b) Each school district shall adopt an admission and attendance of non-resident student's policy.

Purpose

The purpose of this advisory is to provide clarification concerning the education of homeless students in New Hampshire. Varying Interpretations of homelessness, school placement, and New Hampshire Residency Law regarding homeless students have led to confusion and in certain instances have prohibited children from enrolling and attending school. This advisory addresses the basic requirements for school districts to meet the needs of homeless students and answers some of the most frequently asked questions.

Definition

The Stewart B. McKinney Homeless Assistance Act, Subtitle VII-B: Education of Homeless Children and Youth, protects homeless children and youth from being excluded from school enrollment due to the nature and impermanence of their night-time residence. Under the McKinney Act, school districts must review any rules or regulations, practices, or policies that may act as barriers to the enrollment of homeless children and undertake steps to revise such regulations, practices or policies to assure that homeless children and youth are afforded the same opportunities as non-homeless children and youth.

“New Hampshire Education for Homeless Children and Youth”, means as part of the Stewart B. McKinney Homeless Assistance Act, that a homeless child has the right to:

- A free, appropriate public education.
- Remain in the school of origin (last school attended or school attended when child lost housing) for the remainder of the academic year, or if the child or youth became homeless between academic years, for the following academic year, or attend the school nearest their shelter or temporary home. To the extent feasible, the Local Education Agency (LEA) shall comply with the request made by the parent or guardian regarding school placement, regardless of whether the child or youth lives with the homeless parent(s) or is temporarily living elsewhere.
- Immediate enrollment, even when school or medical records cannot be produced at the time of enrollment.
- A priority to pre-school programs.

Which school may a homeless child attend?

There are options, whichever is in the best interest of the child or youth, either

1. The school of origin, which is the school attended when last permanently housed, or the school in which the child was last enrolled; or
2. Any school in which non-homeless students living in the attendance area are eligible to attend. In making a determination of school attendance, the best interest of the child and the request of the parent and/or youth are to be considered.

Is there any reason to delay enrolling a homeless child or youth?

No. Lack of school records or immunizations **cannot** prevent a homeless student from enrolling in a new school. It is the responsibility of the new school to request health and academic records from the previous schools in a “timely manner” and to refer parents and/or youth to a physician

or to a free or low cost clinic for any required immunizations. Homeless students do not need to wait until academic or health records arrive to attend the new school. Federal law requires immediate enrollment of homeless children and youth.

NEW HAMPSHIRE DEPARTMENT OF EDUCATION

Questions and Answers Regarding Homelessness

Who is considered homeless?

If a family, out of necessity, because of lack of housing, must reside in a shelter, motel, vehicle, campground, on the street, or doubled up with family or friends, they are homeless. Children and youth living under these or similar circumstances with or without other family members, are considered homeless.

Does homelessness have to be proven?

No. If a family reports they are homeless, the case must be decided individually. Present living conditions (i.e., shelter, campground, motel, hotel or doubled-up families) should be reviewed according to present situation of the family and relative permanence and adequateness of the living environment.

Does residency have to be proven in order for a homeless child to enroll in school?

No. Proof of residency is not required for the enrollment of homeless children. A school may require the parents or guardian of a homeless child to submit an address or other information for contact purposes, as they would for any non-homeless child enrolling in their school.

How does the New Hampshire Residency Law deal with school enrollment of homeless students?

- RSA 193:12 (IV) provides the definition of a homeless child and exceptions to legal residence requirements for homeless pupils. Homeless pupils may attend school in either the district the child/youth is presently residing or, if parents and another district agree, in the best interest of the child, for continuity of education, remain in the school the child/youth was attending when he/she became homeless (known as the school of origin).
- In those cases when there appears to be a conflict in state law and federal law with respect to homeless students, federal law prevails.

What if there is a disagreement on school placement between two superintendents?

The following procedures are in place if superintendents are not able to reach a placement agreement, taking into consideration the best interest of the student(s), and request of the parent(s):

- The Coordinator for the Education of Homeless Children and Youth, Lynda Thistle Elliott (271-3840) may be called upon to help resolve differences.
- In those instances when an agreement between superintendents cannot be reached within 10 days, the Commissioner of Education will make a determination.
- The Superintendents shall jointly submit to the Commissioner a written Request for Determination of Residency identifying the specific issues involved in the residency dispute.

- The Commissioner, upon receipt of the written Request for Determination of Residency, shall utilize the provisions of Ed 200, except that Ed 213 shall apply to a proceeding before the Commissioner.
- A decision of the Commissioner of Education may not be appealed to the State Board of Education.

What if there is a school placement dispute between homeless constituents and Local Education Agencies (LEAs)?

The following steps are provided when there is a placement dispute between parents/youth and LEAs:

- Informal discussion between school district personnel and homeless parents/or or homeless youths to reach a mutually agreeable solution.
- The State Coordinator for the Education of Homeless Children and Youth (271-3840) may be called upon to help resolve continued differences.
- If the residency dispute does not involve more than one school district the dispute shall be resolved by the local school board. Such decision may be appealed to the State Board of Education. The State Coordinator will provide information to the homeless parents and or youths and the school district about the state appeals process in accordance with the New Hampshire Code of Administrative Rules, Chapter Ed 200.
- During the pendency of a determination of residency, a pupil shall remain in attendance in the pupil's current school.

Where can you call for more information?

If you have questions about enrolling homeless children or youth or providing services please call the Department of Education Homeless Education Program at 271-3840 or e-mail LthistleElliott@ed.state.nh.us.

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