

ISSUES OF RESIDENCY

In Illinois, like many states, the ticket to entry into a school is "residency" in that school district. Ordinarily, schools can require that a family produce documentation of residency before permitting the child to enroll. Thanks to laws governing the educational rights of homeless children and youth, homeless families can gain entry without proving residency but that does not make all "residency" issues irrelevant to homeless families.

It's important to understand the "residency" requirements of Illinois law contained in the Illinois School Code, 105 ILCS 5/10-20.12b and 105 ILCS 5/14-1.11a, as well as the educational rights of homeless children as embodied in The Education for Homeless Children Act, 105 ILCS 45/1-5 *et seq.*, and the federal McKinney-Vento Act, 42 U.S.C. § 11431 *et seq.* Where school districts resist admitting children because they are uncertain if the living arrangement constitutes "homelessness," pointing out alternatively that the family is, in fact, *resident* in the district may be the quickest, easiest way to secure enrollment. Similarly, where districts seek to eject children as "non-residents" because of movement out of the district, advocacy based on residency laws may quickly resolve the problem.

Moreover, when a family steps into a school lobby to enroll, schools often provide a number of materials about "residency" and what documents are needed to establish residency. School districts may have web sites, posters, brochures, parent or student handbooks, enrollment forms, and instructional sheets that address residency. Oral and written statements may suggest that *only* residents may enroll or contain warnings telling the parent that he or she is subject to criminal penalties if they enroll a child who is "non-resident." There may be little or nothing on the school enrollment forms, brochures, etc. about enrolling homeless families. While we hope this is now changing in many schools, old habits die hard and old forms die, perhaps, even harder! These materials deter families from gaining access to school and send them away with erroneous information that may keep them from enrolling at *any* school. It's essential to know what the correct information is regarding residency and to ensure that it is understood by parents and the larger community.

Most significantly, families can be both "homeless" and actually "residents" of a given school district. For example, if a homeless shelter is within the school district or if a family is doubled-up in someone's housing in the district, the family is both resident in the district and homeless. Some school districts, failing to properly identify homeless families, inappropriately invoke special legal procedures for the exclusion of non-resident children and by-pass the procedural requirements for making school-selection determinations for homeless children. Sometimes, families who become homeless and are identified as "homeless" by the school are nevertheless told that they cannot return because they didn't have proper residency in the school district in the first place and, therefore, the school is not properly a "school of origin" to which they have a right to

return. When letters are sent to parents challenging residency, they often state tuition charges totaling thousands of dollars –a sum very intimidating to low-income parents.

Many districts also require a state i.d. or a driver’s license as well as a lease, deed or mortgage papers to show residency despite the fact that Districts are not allowed to insist on any one piece of documentation.

Understanding “residency” rules and procedures can help keep children in a stable school setting and prevent schools from excluding children or causing them to miss school days. There is a lot of misunderstanding and misinformation about Illinois residency laws and, particularly for those who work within schools and school districts, a correct understanding can be invaluable.

Some important principals of school “residency” law are:

- Any Illinois child has the right to finish the school year in the school he or she lawfully started the year in, regardless of whether the child subsequently moves out of the District.
- There is no requirement that an adult possess a formal court order of guardianship to enroll a child in school
- There is no requirement about a set number of days, weeks or months that a child must be living in a school district to establish “residency” or “permanent residency”
- There is no “24/7” requirement, i.e. a child who lives at an address in a district need not stay at that address every day or night or take all meals there in order to be a valid “resident.”
- A school district cannot require one particular form of proof from an enrolling adult to show “residency”
- No child can validly enroll in school if he or she lives within a district *solely* for the purpose of accessing that District’s schools.

Alicia becomes homeless in September and asks her brother, Shelton, to please help. He takes Alicia’s four children into his one-bedroom apartment and begins receiving their TANF benefits. Shelton lives within the boundaries of District 144 and so he enrolls the four children in District 144 schools. Two months later, the Superintendent of District 144 calls to say that the children are not “residents,” because the children should be living with their mother (in another District) and Shelton does not have legal guardianship. He says Shelton must withdraw them from school. Shelton calls the principal with whom he has a good relationship and is told how sorry the principal is but “that’s the law.” Shelton withdraws the children.

Consider:

Should the children be able to be enrolled in District 144 as “residents”?

Should the children be able to be enrolled in District 144 as “homeless”?

What went wrong ?

What should be done?

What could you do to prevent this from happening?

A child is ordinarily presumed to be a resident of the district in which his or her parent resides. The “residency” section of the School Code, however, states clearly that “[t]he residence of a *person who has legal custody* of a pupil is deemed to be the residence of the pupil.” 105 ILCS 5/10-20.12b(1) At first blush, this might lead you to think that Shelton must, therefore, possess some court order establishing “legal custody” in order for the children to be residents of District 144. But if you read on, the law describes a few different ways in which “legal” custody can be established for purposes of the School Code:

(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...to a person with whom the pupil resides other than to have access to the [district schools]
- (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 to have access to the [district schools]
- (iv) Custody exercised by an adult caretaker relative who is receiving [public aid] for the pupil who resides with that adult caretaker relative for purposes other to have access to the [district schools]
- (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 to have access to the [district schools]

Should the children be able to be enrolled in District 144 as “residents”?

Shelton clearly falls within this category (iv) and perhaps (v) and so he has “legal custody” of the children within the meaning of the School Code. No guardianship is necessary.

But can District 144 refuse to admit the children because Alicia, the children’s mother, lives somewhere else? The answer is no. So long as Shelton assumes and exercises responsibility for the children, for reasons *other than* accessing District 144 schools, District 144 must treat the children as resident pupils. It is not up to the District to decide who should be caretaker –as between Alicia and Shelton-- for these children.

Should the children be able to be enrolled in District 144 as “homeless”?

Looking to the federal McKinney-Vento Act in Shelton’s case, for the definition of “homeless,” it is clear that the children were “sharing the housing of others due to loss of housing, economic hardship, or a similar reason.” 42 U.S.C. 11434a(2)(B). Illinois abides by the McKinney-Vento definitions. The fact that the children live apart from their mother presents no issue with respect to the status of being homeless since, under McKinney-Vento, the choice of school is the same “regardless of whether the child or youth lives with the homeless parents or has been temporarily placed elsewhere.” 42 U.S.C. 11432(g)(3)(F).

What went wrong ?

Had the principal and superintendent understood that either the rules pertaining to the education of homeless children or the residency requirements completely, or had they designated an employee who was particularly trained and knowledgeable to review proposed dis-enrollment decisions before Shelton was contacted, this problem could have been avoided. Perhaps the superintendent’s incorrect understanding came from Board of Education rules that were inaccurate or poorly drafted. Perhaps it came from a long-standing practice in the district that no one had ever scrutinized. Perhaps over the years the clerk at the front desk became over-confident of her understanding of the law regarding enrollment or perhaps a form that was drafted years ago is still in use. Perhaps an attorney for the district gave the superintendent poor advice or no advice. Districts should think about internal mechanisms that can create a reliable check before any child is urged to leave school.

What should be done?

Because residency and homelessness often overlap, and because schools have the affirmative duty to identify and assist children who may be homeless, the homeless liaison, in particular, should be asked to review every situation in which the living arrangement of the child is an issue and removal of the child is proposed. And because

low-income children may make multiple school changes that are detrimental to their learning, even before they become homeless, any opportunity to keep the child stable in one school should be explored to avoid precipitous changes.

Parents and other adults who enroll children should also be given important information about residency as well as the educational rights of homeless children. Both set of “rights” should be presented in an integrated way so that neither parents nor administrators apply one set of rules to the exclusion of the other.

What could you do to prevent this from happening?

- Ensure that your district’s McKinney liaison reviews each case in which it is proposed that any child be forced to leave.
- Ensure that all district and school forms, brochures, web sites, handbooks and instructional materials reflect accurate information about homelessness and residency rights.
- Provide training to all staff and Board members and administrators responsible for any aspect of enrollment or exclusion policies, procedures and decisions.
- Ensure that the Board and the superintendent conduct thorough reviews and revise all policies or rules to reflect accurately the law and procedure pertaining to residency and homelessness issues.
- Collaborate with local legal aid and legal services program to ensure that they educate clients and provide assistance to parents

Return to the case of Alicia’s four children described above.

Shelton decides to buy a house which is in another school district. He does this in December. Alicia is not able to “get it together” and so Shelton becomes a foster parent to her four children. A homeless liaison at the new district’s school tells Shelton that the children express a desperate desire to return to their old school and that she can work out the arrangement for them. She explains that, since the children were homeless when they were in District 144, they have a right to finish the year there because it is the “school of origin” and the school must provide transportation to a school of origin. Shelton takes the children back to the old school but is told by the Superintendent that, since the children were not lawfully enrolled in the school in the first place, they cannot claim it as a “school of origin.”

Consider:

- Do the children get to return to District 144?
- Are the children still homeless?
- What could your district do to avoid this problem?

Do the children get to return to District 144?

The answer is yes, for three reasons.

(1) As discussed above, the Superintendent is simply wrong about whether the children Shelton is caring for were “residents” under the Illinois School Code. They were residents of District 144 when they were enrolled. Students who become “non-resident” in the course of the school year are allowed to remain in the school to finish the "school term" without having to pay tuition. 105 ILCS 5/10-20.12a. The phrase "school term" as used in the School Code means the entire year, "a minimum of 185 days." Under the law, the children are able to return to their old school to finish the entire school year.

(2) As homeless children, Shelton’s kids may also stay at the school (as their school of origin) “for as long as the child remains homeless or, if the child becomes permanently housed, until the end of the academic year during which the housing is acquired.” 105 ILCS 45/1-10(a)(1). Here, Shelton’s children were clearly homeless when they lived in District 144 and had the right to enroll regardless of any residency issue, so they are entitled to finish the year at the District 144 school even if the children move and are no longer homeless.

(3) Under Illinois law, foster children are entitled to remain in their previous school tuition-free even if they move out of the district provided that the Illinois Department of Children and Family Services determines that it is in their “best interest to maintain attendance at [the] former school district.” (105 ILCS 5/10-20.12b(2)(b))

Shelton’s foster children are, therefore, entitled to return to the District 144 school. Which category they fit into –former resident student, homeless or foster child—will, however, determine what the transportation options may be. Homeless children are, of course, absolutely entitled to transportation to allow them to finish the year in the school of origin. Districts can elect to provide transportation to non-resident students but they do not usually do so and they are not required to provide it. However, it would be wise to see the Rules of the Board of Education for District 144 (which should be made available upon request) to see whether District 144 has a rule to address transportation for non-resident students. Finally, foster children are entitled to receive transportation from DCFS if the school does not provide it and a failure to provide it would cause serious harm to the child. This right is afforded by the Consent Decree in a federal civil rights case named B.H. v. McDonald.

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Are the children still homeless?

There is a question about whether the children are, in fact, homeless after they become foster children and move into Shelton's new house. If they then reside in what appears to be "a regular, fixed and adequate nighttime residence" (42 U.S.C. 11434a(2)(A)) and are not "awaiting foster care placement," (42 U.S.C. 11434a(2)(B)(i)) the children are probably no longer homeless.

What can be done if the Superintendent won't change his mind?

If the Superintendent will not allow the children back, legal action can be taken in at least two ways: Shelton can complain to the Regional Office of Education; request a dispute resolution hearing from the school or seek an attorney and file a complaint in the Circuit Court alleging clear violations of the Illinois Education for Homeless Children Act and the Illinois School Code, seeking an order to admit the children, provide transportation and assess money damages. Often, however, invoking the assistance of the Illinois State Board of Education is enough to ensure compliance.

What could your district do to avoid this problem?

- Train all staff to understand the applicable rules.
- Ensure that the McKinney liaison reviews requests for enrollment or re-enrollment when any staff member (including the superintendent) proposes rejecting the enrollment request.
- Develop inter-district cooperation agreements so that all districts understand the rules that apply and respond promptly and cooperatively to the requests of a McKinney district liaison.

Lisa moved into her brother's home (located within School District 199) with her 9 year old child, Tawanna in September. Lisa's husband had refused to help support the family financially and when the rent on their apartment became overdue and the landlord asked the family to leave, Lisa complied taking Tawanna with her and separating from her husband. Lisa enrolled her child in the District 199 fourth grade class using her brother's address. Lisa's husband continued to live in the old apartment. Lisa got a job and obtained a Section 8 subsidy but has been unable to find her own housing. Because of tensions living with her brother, Lisa and Tawanna began to spend all the weekends at Lisa's sister's house in December. The sister's house is located in another school district. In January, Lisa received a letter from District 199 advising that the superintendent determined that she was not a "resident"

of the District; that her child would be “dis-enrolled immediately;” that she would be liable for tuition in the amount of \$3,900.00; and that, if she requested it, a hearing could be held but she would have the burden of proving residency.

The materials given to Lisa when she first enrolled in District 199 emphasized that a parent must be a “permanent resident” living at the address within the District “24 hours a day, 7 days a week.” After receiving the letter, Lisa takes Tawanna out of the school.

Consider:

Does Tawanna have to leave the school immediately?

Was Lisa “homeless” when she left her husband?

What should the school have done?

What could you do to prevent this from happening at a school in your district?

Does Tawanna have to leave the school immediately?

No. If a school proposes to exclude a child as a non-resident, it must follow a procedure set out by statute. This includes providing a hearing on the issue of residency and allowing the parent to request that the child remain in attendance at the school pending a final decision of the Board of Education after hearing. 105 ILCS 5/10-20.12b(2)(d). If Lisa knew of the right to keep her child in school she could have exercised it. Also, Lisa could invoke the dispute resolution process of the Illinois Education for Homeless Children Act. Either way, Lisa’s daughter could not lawfully be “dis-enrolled immediately.” However, if Tawanna could not legally attend that school, Lisa would eventually be liable for the cost of her tuition, including the tuition for the days she attended pending the Board’s final decision.

Does Tawanna have to leave the school at all?

No. First of all, Lisa and Tawanna are homeless since they lost their housing through economic and “other” reasons of hardship (landlord’s request for her to leave due to non-payment and separation from her husband) and she then doubled-up with her brother. Homeless students can attend their school of origin for as long as they remain homeless or, when housed, until the end of that academic year.

Second, Lisa was a resident when she enrolled Tawanna and is a resident now. Tawanna can stay in the school because she *is* a resident and even if she left her brother’s house and moved to a new district, Tawanna could finish the year in District 199.

Some Illinois school districts assert that children must live “permanently” at an address in the school’s district “24/7,” i.e. 24 hours a day and 7 days a week, even going so far as to specify that meals must be taken at that address and the child must sleep there every night. Some districts have stated such requirements on enrollment materials and forms coupled with stern warnings of criminal prosecution. There is, however, no such requirements embodied in the Illinois School Code. Indeed, if there were, thousands of Illinois children would lose their resident status for their district school when they go just to visit grandma! Because the Illinois School Code defines residency standards and mandates that school districts accommodate all school age children who are residents (105 ILCS 5/10-20.12a), any attempt to exclude Tawanna under the impermissible “24/7” notion would squarely violate Illinois law.

In the above example, Lisa’s children were clearly residents at the start of the school year in September. They lived within the district with their mother. Their mother lived there and only there. Spending weekends at the sister’s does not make her a “non-resident.” It is not the role of the school to determine that Lisa should have continued to live with her husband at her prior address or hold over her tenancy and wait for a formal order of eviction. Of course, Lisa would have to prove she actually lived there which she could do by submitting a letter or affidavit of herself or someone with knowledge of her living arrangement. When a student claims to be a resident –unlike students claiming to be homeless—the district can require documents which are “reasonable” to show residency. No one specific item, an i.d., a birth certificate or a lease, etc. can be required.

There is no legal requirement regarding *how long* a person must actually reside in a district to become a resident. So long as the living situation is not a ruse or fabrication but is genuine, residency can be established. If thereafter the children move, or the children actually sleep in different locations, they are nevertheless allowed to finish the year in that school.

When residency is the issue, and a child is already enrolled, a very specific procedural process can be employed by the school district to attempt to remove a child. 105 ILCS 5/10-20.12b(c) and (c-5). Indeed, the district *must* follow this process to lawfully exclude a child unless the parent agrees to leave. First the district’s board of education must reach a determination that a child is a non-resident, then the district must properly notify the person who enrolled the student by certified mail. That person has the right then to request a hearing in writing by certified mail within 10 days and to keep the child in the school pending the outcome. 5/10-20.12b(d)

The board must notify the enrolling individual of the time of the hearing and must hold the hearing within 20 days (30 days in bigger cities) of the notification. The hearing is held before a hearing officer designated by the district or the board. At the hearing, the person who enrolled the child must prove that the child is a resident. A report of findings must be given to the parent and the parent may file objections to those findings. A final decision must be made by the board within 15 days (45 days in bigger cities) of the hearing. An action can be filed in the Circuit Court to challenge that decision.

In the above-stated problem, Tawanna could not simply be immediately dis-enrolled as the letter sent from the Superintendent suggests. Because she didn't know of that right, and she had no one to advocate for her, Lisa did what the school told her to do. If she had known of her procedural right to keep her daughter in school, and understood her "residency" rights and/or had an advocate, she could have proved that she was a resident and could have challenged the unlawful 24/7 policy that was applied to her in December.

Was Lisa "homeless" when she left her husband?

But Tawanna was also homeless in September since her mother had lost her housing due to economic and other hardships and was, for those reasons, sharing the housing of another. 42 U.S.C. 11434a(2)(B). Because the school was the school nearest where she was actually living, her child had a right to attend *without having to produce any documents to prove her living situation*. If the school doubted her homelessness, it was incumbent upon them to *immediately* inform Lisa about and refer her to the "ombudsperson" (105 ILCS 45/1-25(a) and (c) and McKinney-Vento liaison (42 U.S.C. 11432g(3)(E)(iii), provide her a written statement of reasons why it thought Tawanna had no right to go to school there, 42 U.S.C. 11432g(3)(B) and (3)(E)(ii) and afford her a dispute resolution process as well as a referral to low-cost and free legal services to assist her. (105 ILCS 45/1-25(c) and 42 U.S.C.11432g(3)(E).

What should the school have done?

As you know, school districts have an affirmative duty to identify families who are homeless, 42 U.S.C. § 11432(g)(6)(A)(i) and to do so sensitively. (State Board of Education Policy on the Education of Homeless Children and Youth) They also have an obligation—now under the McKinney-Act as well as the Illinois State Board Policy—to try to keep Tawanna stably in her school. Under the circumstances of Tawanna's case, the school should have realized that she was homeless and never should have subjected her to the residency hearing process—one which is distinctly unfriendly and which, when employed, clearly becomes a barrier to the successful enrollment and attendance of homeless children.

What could you do to prevent this from happening at a school in your district?

Ensure that all materials distributed to families about enrollment or residency are accurate and include references to special populations of students for whom the residency rules are not applicable (homeless, foster children)

Review any determination of non-residency to ensure that it is a correct decision and that issues of homelessness have been considered

Ensure that families have access to legal advocates in your community to ensure that they are treated fairly