



Illinois State Board of Education

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Guidance Document 003

REGISTRATION GUIDANCE FOR THE 2013-2014 SCHOOL YEAR

Residency & Enrollment, Immigrant Pupils, Homeless
Pupils and School Fees & Waivers

*This document is intended to provide non-regulatory guidance on the subject matter listed above.
For specific questions, please contact the person(s) identified in the document.*

Dr. Christopher Koch, State Superintendent

REGISTRATION GUIDANCE FOR THE 2013-2014 SCHOOL YEAR

RESIDENCY & ENROLLMENT, 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 & Enrollment, Immigrant Pupils, Homeless Pupils and School Fees & Waivers.**

I. Residency & Enrollment (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.]

Oftentimes, in an attempt to help families seeking to register students, school district personnel may be providing legal advice to families. School district employees should *not* be providing or purporting to provide legal advice to parents or other adults enrolling children.

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 and 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 shall 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 Affidavit of Enrollment and Residency (ISBE Form 85-51) http://www.isbe.net/accountability/pdf/85-51_affidavit.pdf; or 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.

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In 2011, the U.S. Department of Education (USDOE) issued a guidance letter regarding residency of students and school enrollment in coordination with the Office for Civil Rights and the U.S. Department of Justice.

<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201101.html>.

The USDOE letter echoes much of the guidance provided here by ISBE for Illinois pupils. It informs school districts and state education agencies about their obligations under federal law to provide equal educational opportunities to students residing within their school district. The letter includes an explanation of the types of information that districts may lawfully collect from students and families (e.g., birth certificates to establish age of a child and telephone bills and lease documents to prove residency within a district), and the types of information that districts are prohibited from using as a basis to deny school enrollment to a child (e.g., a foreign birth certificate, or lack of a social security number). The agency encourages everyone to review this letter and the accompanying Q&A and Fact Sheet.

Questions about Residency or Enrollment? Please contact the Division of Public School Recognition at **(312) 814-2223**.

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.

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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 Public School Recognition 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.

LEAs 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.

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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 (“school of origin”); or
- (b) the school in which he or she was last enrolled (“school of origin”); 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 Jeff Aranowski at **(312) 814-2223** 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.

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For a list of waivable fees, click here: <http://www.isbe.net/rules/archive/pdfs/onark.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 **2013-2014**.

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.

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

The Healthy, Hunger Free Kids Act of 2010 expands categorical eligibility for free meals to a foster child who is the responsibility of the State or placed by a court. Illinois is currently working toward foster children being electronically directly certified without an application. Prior to implementation of the electronic direct certification option, foster children may be certified through the submission of a household eligibility application or via submission of documentation from the foster placement agency. Households with foster and non-foster children may choose to include the foster child as a household member, as well as any personal income earned by the foster child, on the same household application that includes their non-foster children. More information, including questions and answers, is available in the following guidance: http://www.isbe.net/nutrition/pdf/nslp_hhfka_impl_chart.pdf.

Information regarding school meal programs can be found at <http://www.isbe.net/nutrition/default.htm>. Complete **FY2014** eligibility guidelines can be found under "Income Eligibility Guidelines" at http://www.isbe.net/nutrition/pdf/IEG_14.pdf.

Federal Income Eligibility Guidelines (Effective July 1, 2013 to June 30, 2014)					
	Free Meals (130% Federal Poverty Guideline)				
Household Size	Annual	Monthly	Twice Per Month	Every Two Weeks	Weekly
1	14,937	1,245	623	575	288
2	20,163	1,681	841	776	388
3	25,389	2,116	1,058	977	489
4	30,615	2,552	1,276	1,178	589
5	35,841	2,987	1,494	1,379	690
6	41,067	3,423	1,712	1,580	790
7	46,293	3,858	1,929	1,781	891
8	51,519	4,294	2,147	1,982	991
For each family member, add	5,226	436	218	201	101

Federal Income Eligibility Guidelines (Effective July 1, 2013 to June 30, 2014)					
	Reduced-Price Meals (185% Federal Poverty Guideline)				
Household Size	Annual	Monthly	Twice Per Month	Every Two Weeks	Weekly
1	21,257	1,772	886	818	409
2	28,694	2,392	1,196	1,104	552
3	36,131	3,011	1,506	1,390	695
4	43,568	3,631	1,816	1,676	838
5	51,005	4,251	2,126	1,962	981
6	58,442	4,871	2,436	2,248	1,124
7	65,879	5,490	2,745	2,534	1,267
8	73,316	6,110	3,055	2,820	1,410
For each family member, add	7,437	620	310	287	144

Frequently Asked Questions Regarding Residency, Enrollment, Homeless Enrollment, and School Fees

Q. When attempting to verify residency, may a district require parents or guardians to provide a specific set of documents?

A. No. A district may request that a parent or guardian provide specific documents but may not require an exhaustive list of documents. 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.

Q. Must an adult caretaker obtain an order of custody or guardianship of a child in order to enroll that child in school?

A. No. Pupils who are residents of a district may enroll to attend that district on a tuition-free basis. As noted in the body of this guidance, a pupil's residence is deemed to be the residence of a person who has "legal custody" of a pupil. If the pupil lives with an adult who has assumed and exercises legal 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*. Nothing in statute or rule requires an official action of a court or other administrative body to confer legal guardianship or custody to an adult caretaker for school enrollment purposes.

Q. May a district deny enrollment to a child because the parent/guardian has not filed a birth certificate with the district?

A. No. The purpose of requiring a certified copy of the child's birth certificate is to ensure that the pupil has not been listed as a missing child; it is not a document designed to verify residency for school enrollment purposes. According to the Missing Children Records Act [325 ILCS 50/5], a pupil must provide a certified copy of his/her birth certificate to the school district within thirty (30) days of enrollment. Upon failure to comply, the school or other entity shall immediately notify the Department or local law enforcement agency of such failure, and shall notify the person enrolling the child in writing that he has 10 additional days to comply" [325 ILCS 50/5]. There is no basis in law to exclude a pupil for failure to produce a birth certificate.

Q. May a district designate certain periods of time for enrollment and/or registration?

A. A district may designate certain dates/times for enrollment and/or registration. However, parents/guardians and pupils that are unable to enroll and/or register during designated dates/times must be accommodated during on alternative dates/times so as to allow for access for all pupils and families.

Q. After the school year begins, how can a district challenge the residency of pupil whom it believes is a nonresident of the district?

A. The district must send notice to the parent that the district believes the pupil is a nonresident. The notice shall also include the amount of nonresident tuition owed pursuant to 105 ILCS 5/10-20.12a (a). The notice must be sent via certified mail, return receipt requested.

Within ten (10) days of receipt of the notice, the parent may request a hearing to review the determination of the district. The request for a hearing must be sent via certified mail, return receipt requested, to the district superintendent.

Within ten (10) days of receipt of the request for a hearing, the board shall notify the parent (via certified mail, return receipt requested) of the time, date and location of the hearing. The hearing must be held not less than ten (10) nor more than twenty (20) days after the notice of hearing is given. The hearing is held by the

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board or a hearing officer appointed by the board. During the hearing, the parent has the right to be represented by anyone of their choice. If the hearing was conducted by a hearing officer, the hearing officer must, within five (5) days after the hearing, send a written report of his/her findings (via certified mail, return receipt requested) to the board and to the parent.

The parent may file written objections to the hearing officer's findings within five (5) days of receipt of the hearings officer's report. The written objections must be sent via certified mail, return receipt requested to the district superintendent.

Within fifteen (15) days after the hearing, the board shall make a final determination as to whether or not the pupil is a resident of the district and, if found to be a nonresident, the total amount of nonresident tuition owed. The board shall send a copy of its decision to the parent.

Q. What is the school of origin for a homeless pupil and how long may the pupil stay enrolled in that school?

- A. The school of origin for a homeless pupil includes: (a) the school in which he or she was enrolled when permanently housed; and/or (b) the school in which he or she was last enrolled. Per State and Federal law and the ISBE Policy on Homeless Education, children and youth who have experienced homelessness are permitted to attend their school of origin for as long as they remain homeless, or if the child becomes permanently housed, for the remainder of the academic year in which housing is acquired. Where a homeless child or youth may be staying day-to-day in different attendance areas, each such area shall be considered an available choice for school enrollment.
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Q. As noted in this guidance, pupils who assert homelessness must be immediately enrolled, even if they lack the normal documentation used for enrollment. What if a district disagrees with a pupil or parent's assertion that the pupil is homeless?

- A. Per the State Policy on Homeless Education, as soon as such a disagreement arises, the school district liaison should become involved. If the district has legitimate reason to disagree with a parent, guardian or homeless youth regarding an issue related to the rights of homeless pupils, the district must follow a dispute procedure that includes these steps:
- Immediately enroll the pupil(s) and arrange for transportation and other services as appropriate.
 - With the involvement of the district's liaison, attempt to discuss the issues with the parent/youth to determine if more information can clear up the issues. Failing to accomplish that:
 - Issue a letter to the parent/guardian or youth explaining, with a degree of specificity, the district's position as to the homelessness-related dispute. In this letter, the district must also include referrals to free/reduced cost legal help and an outline of the dispute resolution procedure. The district must copy on such letter the applicable regional superintendent of schools and Illinois' Coordinator for the Education of Homeless Children and Youth ("State Coordinator").
 - Refer the child or his or her parent or guardian to the fair and impartial ombudsman appointed by the district's regional superintendent of schools (the "Ombudsman"). The district's liaison should exercise responsibility for facilitating access to legal help and advocacy and other information and, upon knowledge that legal representation is obtained by a family or youth, the district (through its liaison or otherwise) shall appropriately work with such legal representative throughout the dispute resolution process.

For a complete description of procedures and timelines, please see the State Policy on Homeless Education and the Illinois State Plan on Homeless Education.

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Q. What action can a district take if a pupil has unpaid school fees?

- A. Pupils may not be discriminated against, punished or academically penalized in any way for incurring outstanding school fees, fines or other charges. For example, districts may not engage in any of the following actions for a pupil's inability or refusal to pay outstanding fees, fines or other charges: refuse to enroll or register a pupil, deny participation in graduation ceremonies, withhold a diploma, lower grades, remove classes from a class schedule, or otherwise exclude the pupil from academic services.

Per the implementing regulations for the Illinois School Student Records Act, “[i]f the student has unpaid fines, fees, or tuition charged pursuant to Section 10-20.12a of the School Code [105 ILCS 5/10-20.12a] and is transferring to a public school located in Illinois or any other state, the school may elect to include in the student's record transferred pursuant to this Section the unofficial record of the student's grades in lieu of the student's official transcript of scholastic records. If the school so elects, the school shall within 10 calendar days after the student has paid all of his or her unpaid fines or fees and at its own expense forward the student's official transcript of scholastic records to the student's new school.” [Per 23 Ill Admin. Code 375..75 (i)].

Further, subject to fee waiver guidelines, a district retains the ability to bring a civil claim against parents or guardians with outstanding fees, fines or other charges.

Q. May a district charge a late registration fee for pupil enrolling in the district after specified dates?

- A. No. As a district may request, but not require, that pupils enroll and/or register during a certain window, it may not institute a fine or additional fee for those pupils that register outside of a designated registration and/or enrollment period.