

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 share 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 purposes 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

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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.

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- (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

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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 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.

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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, RSA 169-D 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 forward, 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.

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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.

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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.

Legal Reference:

RSA 193:12, Legal Residence Required

Proposed: 11/14/02

Adopted: 12/12/02

NHSBA Review: 01/23/14