



October 30, 2020

To: Superintendents and School Principals

From: Anthony F. Cottone, Chief Legal Counsel

Subject: School Residency Determinations

Many questions concerning school residency are raised at the beginning of the school year, and thus it has been RIDE's recent practice to provide a brief reminder of the applicable law and the process by which residency disputes must be resolved. Although we are past the very beginning of this very unusual school year, I somehow doubt that residency issues will go away. Indeed, the pandemic may increase their number. Thus, I am continuing RIDE's recent practice and providing this brief reminder.

R.I. Gen. Laws § 16-64-6 provides that disputes concerning the residency of students shall be resolved by the Commissioner. Before a residency dispute is brought to the Commissioner for resolution, we request that the school district make a concerted effort to communicate with parents and guardians to determine what the student's actual living situation is and the reasons for it. It is sometimes the case that school residency "disputes" are presented to the Commissioner's office prior to any factual inquiry being made by the district, only to find out in the course of scheduling a hearing that the facts actually establish the student's school residency in the district. In all cases in which there is an actual dispute, the school district must notify the parent(s) or guardian of a student of: (1) the reason(s) for the district's refusal to enroll the child, and (2) the parent's or guardian's right to appeal the district's decision to the Commissioner. It is critical for this notice to be given so that gaps in school attendance can be avoided. We have enclosed a form of written notice, along with a *Spanish translation* for your use as needed. We would appreciate your cooperation in making sure that appropriate staff in your district have copies of this form and that they use it whenever a determination of non-residency is made. And please keep in mind that students already enrolled and in attendance cannot be disenrolled from school upon the filing of an appeal by a parent or guardian, or while a hearing is pending before the Commissioner's office.

Legal Guardianship. R.I. Gen. Laws § 16-64-1 provides that a child can establish residency for school purposes even if he lives separate and apart from his parent, and even if he lives with a relative or a person who is not his legal guardian. If a child lives with a person who has not been appointed as his legal guardian but who is acting *in loco parentis*, and the purpose for these living arrangements is for some *substantial reason other than to attend a district's schools*, the student is entitled to enroll. A district cannot condition school enrollment on the appointment of a legal guardian. The guardianship would not necessarily change a child's residency unless the

guardian had been appointed for a substantial reason other than to change the child's residency for school purposes.

Completion of Semester. Under R.I. Gen. Laws § 16-64-8, if a student changes residence prior to the end of a semester, the student must be allowed to complete the semester in his or her original school district. If the student is a senior or has completed the junior year and is about to enter the senior year, the student must be allowed to complete the senior year in his or her original city or town of residence.

Homeless Students. Under the federal McKinney-Vento Homeless Assistance Act students defined as homeless, which no longer includes students who are awaiting placement in a foster home, may request to continue their education in their School District of Origin while under the protection of the Act. If a homeless student's election to remain in his or her School District of Origin requires crossing district boundaries, responsibility for transportation shall be divided between the sending and receiving school districts and remain with these districts until the end of the academic year in which the student becomes permanently housed.

Children Placed in Foster Care. The Every Student Succeeds Act's (ESSA) educational stability provisions, which became effective on December 10, 2016, creates a legal presumption that it is in a child's best interest to continue attending his or her School of Origin, which is defined as "the school in which a child is enrolled at the time of placement in foster care," or alternatively, if there is a change in residential placement, "the school in which the child is enrolled at the time of the placement change." When a child's School of Origin is located in a city or town other than the city or town where the child currently resides, the residency rules under title 16, chapter 64 of the R.I. Gen. Laws will likely be preempted by ESSA, and despite the child's residence, the child will remain in his or her School of Origin, and the District of Origin will remain responsible for the child's education (including transportation). However, if ESSA's School of Origin presumption has been rebutted by a DCYF Best Interest Determination, the residency rules under chapter 64 would then be applicable. A school district can challenge a Best Interest Determination made by DCYF as long as it has enrolled the child in compliance with the Best Interest Determination. However, the Commissioner's review will generally be confined to determining whether DCYF was "clearly erroneous" and/or whether DCYF failed to comply with applicable procedure.

Documentation of Residency. Districts may require students or their parents to provide proof of residency within the district at the time of enrollment. Care should be taken to avoid requesting or requiring documentation of residency that would have a "chilling effect" on the enrollment of undocumented children. Undocumented children, like U.S. citizens, have the right to attend school as long as they meet the residency requirements established by state law. While a district may restrict attendance to district residents, inquiring into students' citizenship or immigration status, or that of their parents or guardians, would not be relevant to establishing residency within the district. Districts should review the list of documents that can be used to establish residency and ensure that any required documents would not unlawfully bar or discourage a student who is undocumented, or whose parents are undocumented, from enrolling in or attending school. Schools should also avoid asking questions related to immigration status or that may reveal a child's immigration status, such as asking for a Social Security number. We

recognize that districts may need to collect certain data pursuant to state and/or federal laws, however they should do so after a student has enrolled in school so as not to inadvertently give the impression that information related to immigration status will be used in making enrollment decisions.

I hope that this brief summary of the residency rules and procedures will be helpful both now and throughout the school year. Any specific questions should be referred to your district's legal counsel. If we can provide you with any additional information, please contact the Legal Department at 401-222-8979 or email Legal@ride.ri.gov.

NOTICE OF NON-RESIDENCY DETERMINATION

Dear _____:

This office has determined that _____ is not a resident of the town/city of _____ for school purposes. The reason for non-resident status is:

- _____ The student does not physically reside in the district.
- _____ The student lives in the district, but not with a parent, and the reason for living apart from the parent(s) is not for a substantial reason other than to attend this district’s school.
- _____ The student has not shown that he/she is an emancipated minor.
- _____ Exceptions to school residency under Rhode Island General Law 16-64-8 do not apply.*
- _____ A legal guardian was appointed for no substantial reason other than to change his/her school residence.

RIGHT TO APPEAL

If you disagree with this determination of school residency, you may appeal this decision directly to the Commissioner of Elementary and Secondary Education. Written appeals, signed by a parent or guardian of the student, may be submitted to:

Commissioner Angélica Infante-Green
Rhode Island Department of Elementary and Secondary Education
255 Westminster Street
Providence, RI 02903
E-mail: Legal@ride.ri.gov
Fax 401-222-6178

RIGHTS OF STUDENTS ALREADY ENROLLED

If the student is enrolled and attending school at the time of the district’s determination of non-residency, and the parent or guardian disagrees with the district’s determination of school residency, the student should remain enrolled until an expedited hearing can be held at the Department of Elementary and Secondary Education.

Principal or Attendance Office

*R.I.G.L. 16-64-8 permits a student who changes his or her residency during the course of a semester to complete the semester in his/her original school district. This law also permits a student to complete his or her senior year in his/her original school district if he/she changes residence after completion of his/her junior year.

AVISO DE LA DETERMINACIÓN DE NO-RESIDENCIA

Estimado _____:

Esta oficina ha determinado que _____ no es residente del pueblo/ciudad de _____ para fines escolares. La razón por el estado de no-residente es:

- El estudiante no reside físicamente en el distrito.
- El estudiante vive en el distrito, pero no con un padre, y la razón de vivir aparte del padre(s) no es por un motivo substancial salvo de asistir a la escuela de este distrito.
- El estudiante no ha demostrado que él/ella es un menor emancipado.
- Excepciones a residencia escolar debajo La Ley General de Rhode Island (R.I.G.L.) 16-64-8 no se aplican. *
- Un guardián legal fue nombrado por no motivo substancial salvo de cambiar su residencia escolar.

DERECHO A APELAR

Si usted no está de acuerdo con esta determinación de residencia escolar, puede apelar esta decisión directamente al Comisionado de Educación Primaria y Secundaria, 255 Westminster Street, Providence, R.I. 02903. Se puede someter apelaciones escritas, firmadas por un padre o por un guardián del estudiante, a:

Commissioner, Angélica Infante-Green
RI Department of Elementary & Secondary Education
255 Westminster Street
Providence RI 02903
Fax # 401-222-6178
E-mail: Legal@ride.ri.gov

DERECHOS DE ESTUDIANTES YA INSCRITOS

Si el estudiante está inscrito y asistiendo a la escuela al tiempo de la determinación del distrito de no-residencia, y el padre o guardián no está de acuerdo con la determinación del distrito de no-residencia, el estudiante debe seguir inscrito hasta que se pueda tener una audiencia rápida en el Departamento de Educación Primaria y Secundaria.

Director

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Oficial de asistencia

R.I.G.L. 16-64-8 permite a un estudiante que cambie su residencia durante el curso de un semestre para completar el semestre en su distrito escolar original. Esta ley también permite a un estudiante terminar su último año (4^{to}) en su distrito escolar original si cambia residencia después de terminar el 3^{er} año.