

From: [Smith, Jennifer A.](#)
To: [O'Keefe, Bridget](#)
Cc: [Mary Dickson \(marydickson@bond-dickson.com\)](mailto:marydickson@bond-dickson.com)
Bcc: [Rodriguez, Vivian](#)
Subject: RE: Follow Up on Issues of Concern to School District No. 10
Date: Friday, October 9, 2020 2:56:11 PM

I was probably too limited in my response. The provision for non-IEP-eligible students is also largely based on the location of the parent/guardian. Here is the provision for non-IEP students below. There are other considerations for services for homeless students.

(105 ILCS 5/10-20.12b)
Sec. 10-20.12b. Residency; payment of tuition; hearing; criminal penalty.
(a) For purposes of this Section:
(1) The residence of a person who has legal custody of a pupil is deemed to be the residence of the pupil.
(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 of competent jurisdiction to a person with whom the pupil resides for reasons other than to have access to the educational programs of the district.
(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 than to have access to the educational programs of the district.
(iv) Custody exercised by an adult caretaker relative who is receiving aid under the Illinois Public Aid Code for the pupil who resides with that adult caretaker relative for purposes other than to have access to the educational programs of the district.
(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 night-time abode for purposes other than to have access to the educational programs of the district.
(a-5) If a pupil's change of residence is due to the military service obligation of a person who has legal custody of the pupil, then, upon the written request of the person having legal custody of the pupil, the residence of the pupil is deemed for all purposes relating to enrollment (including tuition, fees, and costs), for the duration of the custodian's military service obligation, to be the same as the residence of the pupil immediately before the change of residence caused by the military service obligation. A school district is not responsible for providing transportation to or from school for a pupil whose residence is determined under this subsection (a-5). School districts shall facilitate re-enrollment when necessary to comply with this subsection (a-5).
(b) Except as otherwise provided under Section 10-22.5a, only resident pupils of a school district may attend the schools of the district without payment of the tuition required to be charged under Section 10-20.12a. However, children for whom the Guardianship Administrator of the Department of Children and Family Services has been appointed temporary custodian or guardian of the person of a child shall not be charged tuition as a nonresident pupil if the child was placed by the Department of Children and Family Services with a foster parent or placed in another type of child care facility and the foster parent or child care facility is located in a school district other than the child's former school district and it is determined by the Department of Children and Family Services to be in the child's best interest to maintain attendance at his or her former school district.

(c) The provisions of this subsection do not apply in school districts having a population of 500,000 or more. If a school board in a school district with a population of less than 500,000 determines that a pupil who is attending school in the district on a tuition free basis is a nonresident of the district for whom tuition is required to be charged under Section 10-20.12a, the board shall notify the person who enrolled the pupil of the amount of the tuition charged under Section 10-20.12a that is due to the district for a nonresident pupil's attendance in the district's schools. The notice shall detail the specific reasons why the board believes that the pupil is a nonresident of the district and shall be given by certified mail, return receipt requested. Within 10 calendar days after receipt of the notice, the person who enrolled the pupil may request a hearing to review the determination of the school board. The request shall be sent by certified mail, return receipt requested, to the district superintendent. Within 10 calendar days after receipt of the request, the board shall notify, by certified mail, return receipt requested, the person requesting the hearing of the time and place of the hearing, which shall be held not less than 10 nor more than 20 calendar days after the notice of hearing is given. At least 3 calendar days prior to the hearing, each party shall disclose to the other party all written evidence and testimony that it may submit during the hearing and a list of witnesses that it may call to testify during the hearing. The hearing notice shall notify the person requesting the hearing that any written evidence and testimony or witnesses not disclosed to the other party at least 3 calendar days prior to the hearing are barred at the hearing without the consent of the other party. The board or a hearing officer designated by the board shall conduct the hearing. The board and the person who enrolled the pupil may be represented at the hearing by representatives of their choice. At the hearing, the person who enrolled the pupil shall have the burden of going forward with the evidence concerning the pupil's residency. If the hearing is conducted by a hearing officer, the hearing officer, within 5 calendar days after the conclusion of the hearing, shall send a written report of his or her findings by certified mail, return receipt requested, to the school board and to the person who enrolled the pupil. The person who enrolled the pupil may, within 5 calendar days after receiving the findings, file written objections to the findings with the school board by sending the objections by certified mail, return receipt requested, addressed to the district superintendent. Whether the hearing is conducted by the school board or a hearing officer, the school board shall, within 30 calendar days after the conclusion of the hearing, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a as a result of the pupil's attendance in the schools of the district. The school board shall send a copy of its decision within 5 calendar days of its decision to the person who enrolled the pupil by certified mail, return receipt requested. This decision must inform the person who enrolled the pupil that he or she may, within 5 calendar days after receipt of the decision of the board, petition the regional superintendent of schools to review the decision. The decision must also include notification that, at the request of the person who enrolled the pupil, the pupil may continue attending the schools of the district pending the regional superintendent of schools' review of the board's decision but that tuition shall continue to be assessed under Section 10-20.12a of this Code during the review period and become due upon a final determination of the regional superintendent of schools that the student is a nonresident.

Within 5 calendar days after receipt of the decision of the board pursuant to this subsection (c) of this Section, the person who enrolled the pupil may petition the regional superintendent of schools who exercises supervision and control of the board to review the board's decision. The petition must include the basis for the request and be sent by certified mail, return receipt requested, to both the regional superintendent of schools and the district superintendent.

Within 5 calendar days after receipt of the petition, the board must deliver to the regional superintendent of schools the written decision of the board, any written evidence and

testimony that was submitted by the parties during the hearing, a list of all witnesses that testified during the hearing, and any existing written minutes or transcript of the hearing or verbatim record of the hearing in the form of an audio or video recording documenting the hearing. The board may also provide the regional superintendent of schools and the petitioner with a written response to the petition. The regional superintendent of schools' review of the board's decision is limited to the documentation submitted to the regional superintendent of schools pursuant to this Section.

Within 10 calendar days after receipt of the documentation provided by the school district pursuant to this Section, the regional superintendent of schools shall issue a written decision as to whether or not there is clear and convincing evidence that the pupil is a resident of the district pursuant to this Section and eligible to attend the district's schools on a tuition-free basis. The decision shall be transmitted to the board and the person who enrolled the pupil and shall, with specificity, detail the rationale behind the decision.

(c-5) The provisions of this subsection apply only in school districts having a population of 500,000 or more. If the board of education of a school district with a population of 500,000 or more determines that a pupil who is attending school in the district on a tuition free basis is a nonresident of the district for whom tuition is required to be charged under Section 10-20.12a, the board shall notify the person who enrolled the pupil of the amount of the tuition charged under Section 10-20.12a that is due to the district for the nonresident pupil's attendance in the district's schools. The notice shall be given by certified mail, return receipt requested. Within 10 calendar days after receipt of the notice, the person who enrolled the pupil may request a hearing to review the determination of the school board. The request shall be sent by certified mail, return receipt requested, to the district superintendent. Within 30 calendar days after receipt of the request, the board shall notify, by certified mail, return receipt requested, the person requesting the hearing of the time and place of the hearing, which shall be held not less than 10 calendar nor more than 30 calendar days after the notice of hearing is given. The board or a hearing officer designated by the board shall conduct the hearing. The board and the person who enrolled the pupil may each be represented at the hearing by a representative of their choice. At the hearing, the person who enrolled the pupil shall have the burden of going forward with the evidence concerning the pupil's residency. If the hearing is conducted by a hearing officer, the hearing officer, within 20 calendar days after the conclusion of the hearing, shall serve a written report of his or her findings by personal service or by certified mail, return receipt requested, to the school board and to the person who enrolled the pupil. The person who enrolled the pupil may, within 10 calendar days after receiving the findings, file written objections to the findings with the board of education by sending the objections by certified mail, return receipt requested, addressed to the general superintendent of schools. If the hearing is conducted by the board of education, the board shall, within 45 calendar days after the conclusion of the hearing, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a as a result of the pupil's attendance in the schools of the district. If the hearing is conducted by a hearing officer, the board of education shall, within 45 days after the receipt of the hearing officer's findings, decide whether or not the pupil is a resident of the district and the amount of any tuition required to be charged under Section 10-20.12a as a result of the pupil's attendance in the schools of the district. The board of education shall send, by certified mail, return receipt requested, a copy of its decision to the person who enrolled the pupil, and the decision of the board shall be final.

(d) If a hearing is requested under subsection (c) of this Section to review the determination of the school board or board of education that a nonresident pupil is attending the schools of the district without payment of the tuition required to be charged under Section 10-20.12a, the pupil may, at the request of the person who enrolled the pupil, continue attendance at the

schools of the district pending the decision of the board or regional superintendent of schools, as applicable, and the school district's payments under Section 18-8.05 of this Code shall not be adjusted due to tuition collection under this Section. However, attendance of that pupil in the schools of the district as authorized by this subsection (d) shall not relieve any person who enrolled the pupil of the obligation to pay the tuition charged for that attendance under Section 10-20.12a if the final decision of the board or regional superintendent of schools is that the pupil is a nonresident of the district. If a pupil is determined to be a nonresident of the district for whom tuition is required to be charged pursuant to this Section, the board shall refuse to permit the pupil to continue attending the schools of the district unless the required tuition is paid for the pupil.

(d-5) If a hearing is requested under subsection (c-5) of this Section to review the determination of the board of education that a nonresident pupil is attending the schools of the district without payment of the tuition required to be charged under Section 10-20.12a of this Code, the pupil may, at the request of the person who enrolled the pupil, continue attendance at the schools of the district pending a final decision of the board following the hearing. However, attendance of that pupil in the schools of the district as authorized by this subsection (d-5) shall not relieve any person who enrolled the pupil of the obligation to pay the tuition charged for that attendance under Section 10-20.12a of this Code if the final decision of the board is that the pupil is a nonresident of the district. If a pupil is determined to be a nonresident of the district for whom tuition is required to be charged pursuant to this Section, the board shall refuse to permit the pupil to continue attending the schools of the district unless the required tuition is paid for the pupil.

(e) Except for a pupil referred to in subsection (b) of Section 10-22.5a, a pupil referred to in Section 10-20.12a, or a pupil referred to in subsection (b) of this Section, a person who knowingly enrolls or attempts to enroll in the schools of a school district on a tuition free basis a pupil known by that person to be a nonresident of the district shall be guilty of a Class C misdemeanor.

(f) A person who knowingly or wilfully presents to any school district any false information regarding the residency of a pupil for the purpose of enabling that pupil to attend any school in that district without the payment of a nonresident tuition charge shall be guilty of a Class C misdemeanor.

(g) The provisions of this Section are subject to the provisions of the Education for Homeless Children Act. Nothing in this Section shall be construed to apply to or require the payment of tuition by a parent or guardian of a "homeless child" (as that term is defined in Section 1-5 of the Education for Homeless Children Act) in connection with or as a result of the homeless child's continued education or enrollment in a school that is chosen in accordance with any of the options provided in Section 1-10 of that Act.

(Source: P.A. 99-670, eff. 1-1-17.)

From: O'Keefe, Bridget <bokeefe@daspinaument.com>

Sent: Friday, October 9, 2020 2:52 PM

To: Smith, Jennifer A. <jas@franczek.com>

Cc: Mary Dickson (marydickson@bond-dickson.com) <marydickson@bond-dickson.com>

Subject: RE: Follow Up on Issues of Concern to School District No. 10

Thank you for your quick response. It is greatly appreciated.

We will review this provision and get back to you with any questions.

Have a good weekend,

Bridget

Bridget O'Keefe
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From: Smith, Jennifer A. <jas@franczek.com>
Sent: Friday, October 9, 2020 2:50 PM
To: O'Keefe, Bridget <bokeefe@daspinaument.com>
Cc: Mary Dickson (marydickson@bond-dickson.com) <marydickson@bond-dickson.com>
Subject: RE: Follow Up on Issues of Concern to School District No. 10

Yes, Section 14-1.11 of the School Code establishes residency requirements for special education students in the circumstances listed. I copied the text below for your easy reference.

105 ILCS 5/14-1.11) (from Ch. 122, par. 14-1.11)
Sec. 14-1.11. Resident district; parent; legal guardian. The resident district is the school district in which the parent or guardian, or both parent and guardian, of the student reside

when:

(1) the parent has legal guardianship of the student and resides within Illinois; or

(2) an individual guardian has been appointed by the courts and resides within Illinois; or

(3) an Illinois public agency has legal guardianship and the student resides either in the home of the parent or within the same district as the parent; or

(4) an Illinois court orders a residential placement but the parents retain any legal rights or guardianship and have not been subject to a termination of parental rights order.

In cases of divorced or separated parents, when only one parent has legal guardianship or custody, the district in which the parent having legal guardianship or custody resides is the resident district. When both parents retain legal guardianship or custody, the resident district is the district in which either parent who provides the student's primary regular fixed night-time abode resides; provided, that the election of resident district may be made only one time per school year.

When the parent has legal guardianship and lives outside of the State of Illinois, or when the individual legal guardian other than the natural parent lives outside the State of Illinois, the parent, legal guardian, or other placing agent is responsible for making arrangements to pay the Illinois school district serving the child for the educational services provided. Those service costs shall be determined in accordance with Section 14-7.01.

(Source: P.A. 95-844, eff. 8-15-08.)

From: O'Keefe, Bridget <bokeefe@daspinaument.com>

Sent: Friday, October 9, 2020 1:25 PM

To: Smith, Jennifer A. <jas@franczek.com>

Cc: Mary Dickson (marydickson@bond-dickson.com) <marydickson@bond-dickson.com>

Subject: Follow Up on Issues of Concern to School District No. 10

Dear Jennifer,

Thank you for taking the time to talk with me yesterday about issues that remain of concern to your client, School District No. 10. I greatly appreciate the opportunity to better understand their perspective so that we can continue to explore possible solutions.

Would it be possible for you to forward to me the legal authority for the School District's position that it is the location of the parent – not the child – that governs a child's ability to receive services in the District? There appears to be some confusion on this issue and it would be helpful to work from the same source documentation.

Thank you in advance for your assistance with this matter.

Best,

Bridget O'Keefe

Bridget O'Keefe

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