

## RESIDENCY DETERMINATIONS

### 1. Overview

- 1.1 Pursuant to Section 3202 of the Education Law, a person over five (5) and under twenty-one (21) years of age who has not received a high school diploma is entitled to attend the public school in the school district where such person resides. A school district has no obligation to provide an education (or educational services) to nonresidents. The terms by which nonresidents are accepted into the Plattsburgh City School District ("District") are set by the Board of Education.
- 1.2 The District has a legal right to question the bona fide residency of its constituents to determine its obligation to provide an education (or educational services). Accordingly, the Board of Education and/or its designee reserves the right to investigate and determine whether the information submitted to the District upon application for enrollment is insufficient or raises questions requiring further information before a residency determination is made. In making a residency determination, the District must establish that a prospective student is not a resident of the District before it may exclude his/her access to educational services. If the District has reason to believe it should challenge whether a prospective student's residence is within the District, the procedures set forth in this Policy shall be followed.

### 2. Residency Determination Procedure

The residency determination procedure shall include an initial written notice, a review meeting, and a determination notice.

#### 2.1 Initial Written Notice

The Board of Education (or its designee) will provide written notice of the District's proposed determination of nonresidence to the prospective student's parent, guardian, the child, or to other persons as is appropriate under the circumstances. The initial written notice shall contain the following information:

- 2.1.1. the factual basis of the District's proposed determination that the prospective student is not a resident of the District;
- 2.1.2 an opportunity for the submission of information relevant to the prospective student's right to attend school at the District;  
and
- 2.1.3 the time, date, and place for a review meeting.

## 2.2 Review Meeting

- 2.2.1 The District will conduct a review meeting at which the prospective student's parent, guardian, the child, or other persons as may be appropriate under the circumstances may present additional information to the Board of Education (or its designee) showing the prospective student is domiciled within the District and has a right to attend school in the District.
- 2.2.2 The review meeting shall be informal.
- 2.2.3 The review meeting will be scheduled and conducted before the effective date of exclusion of the prospective student, if possible.

## 2.3 Determination Notification

- 2.3.1 Upon completion of the review meeting, a written determination of residency will be made by the Board of Education (or its designee).
- 2.3.2 The Board of Education (or its designee) will send a notification letter to the prospective student's parent, guardian, the child, or to other persons as is appropriate under the circumstances within two (2) days of the review meeting confirming or rejecting the initial residency determination. If the prospective student is determined to be a nonresident, the notification letter shall state the following:
  - a. the child is not entitled to attend the public schools of the District;
  - b. the factual basis of the District's determination that the child is not a resident of the District;
  - c. the date upon which the child will be excluded from the District (or become subject to tuition, if applicable); and
  - d. the determination of the District may be appealed to the Commissioner of Education in accordance with Section 310 of the Education Law within 30 days of the date of the District's determination, and that the procedure for making such an appeal may be obtained from the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234 or by calling (518) 474-5807.

## 3. Determination of Student Residency

- 3.1 Overview The determination of student residency is a mixed question of law and fact. Physical presence alone is insufficient to establish residence within the District. A prospective student must be domiciled

in the District. A person may have only one primary residence or domicile. The presumption, pursuant to Education Law, is that a child resides with his/her parent or guardian and that the parent or guardian provides care and maintains custody and control of the child.

3.2 Children Who Live With Parent or Guardian

For a prospective student residing with his/her parent or guardian, the question of residency will be satisfied by demonstrating that the family is domiciled within the District.

- 3.2.1 To be considered domiciled within the District, the prospective student must show both a physical presence in the District, combined with an intent to remain (e.g., a fixed and permanent home).
- 3.2.2 A showing of domicile (residence) may be made by presenting such documents as:
  - a. real property deeds
  - b. rental agreements
  - c. leases
  - d. rent checks
  - e. rent receipts
  - f. driver's licenses
  - g. utility bills
  - h. voter registration cards
  - i. library cards
  - j. telephone listing
  - k. mail delivery
  - l. income tax returns
  - m. affidavits

3.3 Children Whose Parents Live Apart

For a prospective student whose parents live apart and a Court has awarded custody to one parent, the student's residence is presumed to be that of the custodial parent.

- 3.3.1 If a Court has awarded joint custody and has named one parent as having primary physical custody of the child then the residence of the prospective student will be presumed to be that of the primary physical custodian.
- 3.3.2 The residence determination may be made in the absence of formal legal documents generated by a legal proceeding.

- 3.3.3 Legal custody documents do not prevent a showing that a prospective student lives with someone other than the custodial parent, such as the noncustodial parent, another person, or as an emancipated minor.
- 3.3.4 Copies of legal documents indicating custody and control will be required to be submitted to the Board of Education (or its designee) if they exist.
- 3.3.5 A Parent Affidavit, in a form provided by the District, may be required to be submitted to the Board of Education (or its designee) showing the transfer of custody and control of a prospective student.
- 3.3.6 A Custodial Affidavit from the person claiming to have custody and control of the prospective student, in a form provided by the District, may be required to be submitted to the Board of Education (or its designee).
- 3.3.7 A Parent Affidavit and/or Custodial Affidavit may not be required where, based upon the facts of the case, the Board of Education (or its designee) determines that the Affidavits would place an unreasonable burden on the prospective student.

#### 3.4 Children Who Do Not Reside With a Parent or Guardian

For a prospective student residing with someone other than his/her parents or legal guardian, there must be a determination of custody and control which shows that a particular location within the District is the child's permanent residence and that the individual(s) exercising control have full authority and responsibility with respect to the child's support and custody.

The requisite showing is that there has been a total, and presumably permanent, transfer of custody and control of the prospective student to some other person.

- 3.4.1 Copies of legal documents indicating custody and control will be required to be submitted to the Board of Education (or its designee), if they exist.
- 3.4.2 However, a showing of a transfer of custody and control of the prospective student to some other person may be made in the absence of formal legal documents generated by a legal proceeding.
- 3.4.3 A Parent Affidavit, in a form provided by the District, may be required to be submitted to the Board of Education (or its designee) showing the transfer of custody and control of a child.

- 3.4.4 A Custodial Affidavit from the person claiming to have custody and control of the child, in a form provided by the District, may be required to be submitted to the Board of Education (or its designee).
- 3.4.5 A Parent Affidavit and/or Custodial Affidavit may not be required where, based upon the facts of the case, the Board of Education (or its designee) determines that the Affidavits would place an unreasonable burden on the prospective student.

### 3.5 Emancipated Minors

A prospective student beyond the compulsory school age of sixteen (16) years, who is independent and living apart from his/her parent(s) and not in need or in receipt of foster care, may be considered emancipated for purposes of establishing a residence apart from his/her parent(s). By establishing emancipation, a prospective student rebuts the presumption that his/her residence is with his/her parent(s).

- 3.5.1 A prospective student's status as an emancipated minor may be established when the prospective student produces documentation showing age, his/her independent means of support, and an explanation of the circumstances surrounding the prospective student's emancipation, including a description of the prospective student's relationship with his/her parent or guardian.
- 3.5.2. There is no formal Court proceeding under New York law for establishing emancipation and no legal documents will be required to be submitted.
- 3.5.3 An Affidavit of Emancipation by the prospective student, in a form provided by the District, may be required to be submitted to the Board of Education (or its designee).
- 3.5.4 Evidence that the prospective student is not receiving any support from his/her parents is relevant in making a determination regarding emancipation.
- 3.5.5 Proof of eligibility for public assistance as an emancipated minor may be sufficient to establish the prospective student's emancipation and residency within the District.

### 3.6 Children Lacking a Permanent Address

Where a student has lost his/her permanent home within the District due to circumstances beyond his/her control or has been forced to make temporary living arrangements outside of the District and there is action reflecting an intent to return to the District, such student may continue to attend school in the District and is not required to attend school in the District where he/she is temporarily located.

- 3.6.1 To determine actions reflecting an intent to return, evidence regarding the family's (or individual's) continuing ties to the community and the efforts made to return to the District are relevant.
- 3.6.2 The lack of a permanent residence does not constitute a sufficient basis in itself for denying admission of a prospective student to the District.

### 3.7 Kinship Families

Where a student is temporarily domiciled with non-custodial, blood relative(s) living within the District because of incarceration or incapacitation of the custodial parent(s). These placements will be affirmed for the Superintendent of Schools or designee by the Child Care Coordinating Council of the North Country, Inc. or some other entity affiliated with the NY State Kinship Navigator program, as selected by the Superintendent. As the goal of such enrollment is to provide continued, stable educational opportunities for students whilst their parents re-establish their custodial abilities, designation as a Kinship family will be re-affirmed to the Superintendent by the aforementioned agency semi-annually. Kinship caregiver placement which extend beyond one calendar year should be directed to the family court system for a formal custody transfer to district resident(s).

Adoption date: March 23, 2006

Revised: November 9, 2017