

SCHOOL DISTRICT OF RESIDENCE DETERMINATIONS - BACKGROUND MEMORANDUM

Section 1 of 2003 House Bill No. 1155 directs the Legislative Council to study the criteria by which a student's school district of residence is established and whether that criteria correctly assigns both benefits and responsibilities to the appropriate school districts.

STATUTORY PROVISIONS

Title 15.1 of the North Dakota Century Code (NDCC) contains numerous references to a student's "school district of residence." Under Section 15.1-12-04, a petition for annexation must identify at least one child whose place of residence is on the property to be annexed. Chapter 15.1-23 requires that parents educating students at home maintain contact with the student's school district of residence for various administrative purposes and further provides that a student educated at home is deemed enrolled in the student's school district of residence. Likewise, under Chapter 15.1-25, a student participating in postsecondary enrollment options is "deemed to be in attendance at the student's school district of residence for purposes of calculating per student payments and for purposes relating to the student's eligibility to participate in high school extracurricular activities."

North Dakota Century Code Chapter 15.1-29 addresses the payment of tuition when students who reside in one district and attend school in another district, and Chapter 15.1-31 addresses the occurrence of that same situation under provisions allowing for open enrollment.

North Dakota Century Code Chapter 15.1-32 provides that a "student with disabilities who receives special education services is deemed to be enrolled in the student's school district of residence for purposes of calculating per student payments." The chapter also imposes various liabilities on a school district of residence if a student with disabilities is required to attend school in a different district.

A student's district of residence is readily determinable provided the student resides at a permanent address with both parents. For many students, however, this is not the norm. There is only one section of NDCC Title 15.1 which attempts to define a student's school district of residence and that definition applies only in the limited instance when a student placement is made for purposes other than education. In such instances, a student's school district of residence is:

[T]he district in which the student resides:

- a. At the time that a state court, tribal court, juvenile supervisor, or the division of juvenile services issues an order requiring the student to stay for a prescribed period at a state-licensed foster home or at a state-licensed child care home or facility;
- b. At the time a county or state social service agency places the student, with the consent of the student's parent or legal guardian, at a state-licensed foster home or at a state-licensed child care home or facility;
- c. At the time the student is initially placed in a state-operated institution, even if the student is later placed at a state-licensed foster home or at a state-licensed child care home or facility; or
- d. At the time the student is voluntarily admitted to a state-operated institution or to a state-licensed child care home or facility (see NDCC Section 15.1-29-14).

The section goes on to provide that if, after a student placement is made as provided for under NDCC Section 15.1-29-14(1), the student's custodial parent establishes residency in another school district in this state, the school district in which the custodial parent has established residency becomes the student's school district of residence for purposes of paying tuition and tutoring charges. A "custodial parent" is defined as "the parent who has been awarded sole legal and physical custody of the student in a legal proceeding or, if there is currently no operative custody order, the parent with whom the student resides." If the student resides with both parents, then both are considered to be custodial parents.

General provisions regarding the rules for determining residence are contained in NDCC Section 54-01-26. That section begins with the premise that every person has, in law, a residence, and then it states that in determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.
2. There can be only one residence.
3. A residence cannot be lost until another is gained.

4. The residence of the supporting parent during the supporting parent's life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either that minor's own act or that of that minor's guardian.
7. The residence can be changed only by the union of act and intent.

PRIOR INTERIM EXAMINATION OF STUDENT RESIDENCY DETERMINATIONS

During the 1999-2000 interim the Education Services Committee examined the issue of student residency determinations. The committee found that the North Dakota Century Code provided adequate guidance for residency determination in many instances, but clearly not in all instances. The committee also found that there were more variations on living arrangements than one could be reasonably expected to anticipate and address statutorily. Consequently, no substantive changes were suggested.