

Students

**MOUNT PLEASANT COTTAGE SCHOOL UNION FREE SCHOOL DISTRICT****SUBJECT: RESIDENCY GUIDELINES**

Residence is based, in part, upon an individual's physical presence as an inhabitant within the District as his/her actual and only place of residence.

A student's residence is presumed to be that of his/her parents/persons in parental relation. This presumption can be rebutted by the parents/persons in parental relation or the District, however.

To determine whether the presumption that a student resides with his/her parents/persons in parental relation has been rebutted, the following factors are relevant:

- 1) Is the current address and living arrangement the student's actual and only address?
- 2) Does the student intend to remain permanently in the District?
- 3) Are the parents/persons in parental relation exercising custody or control over the student?
- 4) Do the parents/persons in parental relation continue to support the student?
- 5) Is there sufficient evidence that the parents/persons in parental relation have transferred custody and control of the child to the individual with whom the child is living? (e.g., who claims the student as an income tax exemption?)
  - a. Although the District cannot require a court ordered change of guardianship, it can require a sworn statement or affidavit from the parents/persons in parental relation and/or the claimed custodian residing in the District acknowledging the transfer of custody to the custodian unless the student is an emancipated minor. (see subheading "Emancipated Minors" in this regulation)
  - b. If the student claims to be an emancipated minor, the District cannot require any court documentation to that effect but can require the student to complete a sworn affidavit or statement attesting to emancipated status. (see subheading "Emancipated Minors" in this regulation)
- 6) Why is the student living with others? Where the sole reason for living with others is to take advantage of the services available in the District, the Commissioner has held that the student has not established residence.

When a court order awards custody to one parent/person in parental relation, the student's residence is presumed to be that of the custodial parent/person in parental relation.

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**SUBJECT: RESIDENCY GUIDELINES (Cont'd.)**

When a student lives with a noncustodial parent/person in parental relation in the District, the District must consider whether the student's actual and only residence is with the custodial parent/person in parental relation. In making that determination, the District must consider the same factors as those listed above, but the custodial document would be strong evidence that the child's actual and only residence is with the custodial parent/person in parental relation.

In cases in which a student's time is divided between two households and both parents/persons in parental relation assume the day-to-day responsibilities for the student, (such as in a "50-50" joint custody arrangement), the custodial parent/person in parental relation or parents/persons in parental relation must designate the student's residence within one or the other of the districts in which the two parents/persons in parental relation reside.

**Children of Activated Reserve Military Personnel**

Students temporarily residing outside the boundaries of the District due to relocation necessitated by the call to active military duty of the student's parent/person in parental relation will be allowed to attend the public school that they attended prior to the relocation.

The District is not required to provide transportation between a temporary residence located outside the District and the school the child attends.

The District requires proof of the parent's/person's in parental relation notice of call to active duty and verification of the family's temporary residence outside the District.

**Emancipated Minors**

Students beyond the compulsory attendance age who are independent and living apart from their parents/persons in parental relation may be considered emancipated for purposes of making a determination as to the student's legal residence within the District and, therefore, his/her entitlement to a tuition-free education.

In such cases, where the applicant is living with others, whether the adults with whom the student lives have assumed responsibility for the student is irrelevant.

The basic question is whether the students claiming emancipation have in fact established a residence in which they maintain themselves beyond the support and control of their parents/persons in parental relation.

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**SUBJECT: RESIDENCY GUIDELINES (Cont'd.)**

The actions and intentions of the parents/persons in parental relation of a student under eighteen (18) years of age are relevant to a determination of emancipation because parents/persons in parental relation still execute legal control of the student. In that case, if necessary, the District may request an affidavit from the parents/persons in parental relation. However, a statement from the parents/persons in parental relation of an emancipated minor describing the nature of their relationship to the child may not be required where, based upon the facts of the case, it places an unreasonable burden on the prospective student.

The District should require an affidavit from the student as proof of emancipation and residence, in addition to requesting supporting documentation of the student's age, means of support, home address and circumstances surrounding the student's emancipation (e.g., a statement from the person with whom the student is living, rent receipts, pay stubs, driver's license, letter from the Department of Social Services).

Where a student is emancipated and living with a noncustodial parent/person in parental relation within the District, no issue of whether the residence is the student's actual and only residence arises, and a designation of the student's residence by the custodial parent/person in parental relation is unnecessary.

(NOTE: Refer also to Form #7130F -- Affidavit of Emancipation)

**Children Living With Persons Not Their Parents -- Guardianship or Custody**

In accordance with the Family Court Act and Domestic Relations Law, a person possessing a lawful order of guardianship or custody of a minor child who is not the parent of such child may enroll the child in public school in the school district where he/she and the child reside.

Therefore, upon application for enrollment by the guardian or custodian, the District shall enroll such a child for such time as the child resides with the guardian or custodian in the District upon verification that the guardian or custodian possess a lawful order of guardianship or custody for the child and that the guardian or custodian and the child properly reside in the same household within the District.

**Children Lacking a Permanent Address**

Other children who are not "homeless" or "runaway and homeless" nonetheless might lack a permanent address because they (if they are emancipated) or their families might lose their primary homes due to circumstances beyond their control and might be forced to make temporary living arrangements outside their usual district of residence. These students cannot be deprived of the right to attend school, and residency determinations must be made on a case-by-case basis, focusing upon the

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student's or student's family's intent to return to the district of residence. Temporary absence from the district of residence does not necessarily constitute the establishment of residence in a district elsewhere or the abandonment of permanent residence. Because the lack of a permanent address does not in and of itself constitute a legitimate basis for denying admission, students are entitled either to continue to attend in the district they attended before losing their permanent home or in a district where they are located temporarily.

**Residency Determination**

Prior to making a residency determination, the Board of Education or its designee must afford the student's parent/person in parental relation the opportunity to submit information concerning the student's right to attend District schools.

If it is determined that the student is neither a resident nor entitled to attend as a nonresident, written notice of the determination must be provided within two (2) business days to the parent/person in parental relation or the student. The written notice must include the basis for the determination, the date the student will be excluded from the District, and a statement regarding the right to appeal an adverse decision to the Commissioner of Education within thirty (30) days. The notice must indicate that the procedure for taking the appeal can be obtained from the Office of Counsel, State Education Department, Albany, New York.

**Undocumented Children/Social Security Numbers and Data Collection**

Undocumented children, like U.S. citizen children, have the right to attend school full-time as long as they meet the age and residency requirements established by Federal and State laws. In accordance with Education Law Section 3202, residence is established based on two (2) factors: physical presence as an inhabitant within the district and the intent to reside in the district.

Neither Federal nor State laws require that students have a Social Security number or present a Social Security number to enroll in school. Moreover, undocumented children are ineligible for Social Security numbers. Therefore, during the enrollment/registration process, the District shall not ask for a child's Social Security number.

While the District may need to collect certain data pursuant to State and/or Federal laws, such data shall not be required during the enrollment/registration process so as not to inadvertently give the impression that information related to immigration status will be used in making enrollment determinations.

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**SUBJECT: RESIDENCY GUIDELINES (Cont'd.)**

The State Education Department does not require the District to report students' social security numbers or their status as "legal" or "undocumented" immigrants; however, several State and federal laws require certain student demographic data to be collected by the Department and/or the District in certain circumstances. For example, in order to receive funding under certain federal Title III programs, states and school districts must collect and report data on "immigrant children and youth" served by them. (20 United States Code (USC) Section 6961 et seq.).

A child's residence is presumed to be that of his/her parents or legal guardians. However, the District may encounter students, particularly from other countries, who reside with persons other than their parents or legal guardians. In order to determine residency in these cases, the District may request information regarding such student's custody to establish residency and to ensure the health, safety and welfare of the child.

The following are examples of documentation that may be used to establish a student's residency. This list is not intended to be exhaustive, nor is it a list of required documentation.

- 1) Pay stub;
- 2) Income tax form;
- 3) Deed or lease to house or apartment;
- 4) Utility or other bills sent to the student's home address;
- 5) Membership documents - such as library cards - based upon residency;
- 6) Voter registration document;
- 7) Official driver's license, learner's permit or non-driver ID;
- 8) State or other government-issued ID.

**Homeless Children and Youth**

Please refer to Regulation #7131R -- Education of Homeless Children and Youth.