

## 4: PUPIL RESIDENCY

“District of residence” is defined as the district in which the custodial parent or legal guardian resides. However, there are several exceptions that allow a pupil to be counted as a “resident” of the educating district although the pupil, the parent, or legal guardian may not reside within the school district boundaries. These exceptions are detailed in Section 6(4) of the State School Aid Act (MCL 388.1606) and are discussed below. A nonresident pupil is a pupil who is less than 18 years of age and whose parent(s) or legal guardian does not reside within the educating district's school. Such a pupil may be counted for membership purposes if the pupil has obtained the approval of the resident district or if the pupil meets one of the many exceptions to the approval requirement. These exceptions are detailed in Section 6(6) of the State School Aid Act (MCL 388.1606) and are discussed below.

### A) Resident Pupils

It is the district's responsibility to determine if a pupil is a resident of the district or meets specific criteria that would allow a nonresident pupil to be counted as a resident of the district for pupil membership purposes. A local or intermediate school district may count a pupil as a “**resident pupil**” if the district has evidence that the pupil meets **one** of the following criteria:

- a. For a pupil who is less than 18 years of age, the pupil's parent(s) or legal guardian resides in a dwelling in the district. If the pupil's parents, or the pupil's parent(s) and legal guardian, reside in different districts, either district may enroll the pupil as a resident, regardless of which person has custody.
- b. The pupil lives with a relative other than a parent in a dwelling within the district for the purposes of securing a suitable home and not solely for educational purposes. For pupil accounting purposes, a relative is defined as a parent, grandparent, brother, sister, stepparent, step-grandparent, stepsister, stepbrother, uncle, aunt, first cousin, great aunt, or great uncle by marriage, blood, or adoption. See the note regarding power of attorney below.
- c. The pupil is 18 years of age or an emancipated minor and resides in the district.
- d. The pupil resides in a licensed home, in which he or she was placed by court order or by a child-placing agency. The child is considered a resident of the district where the home in which the child is living is located for pupil accounting purposes.
- e. The pupil has been issued an F-1 visa and resides in the district or the pupil has been issued a J-1 visa and resides in the district with a host family. Additional information on foreign pupils is available here: [http://michigan.gov/documents/mde/foreign\\_students\\_3-06\\_ada\\_502433\\_7.pdf](http://michigan.gov/documents/mde/foreign_students_3-06_ada_502433_7.pdf)
- f. The pupil is a homeless child pursuant to the McKinney-Vento Homeless Assistance Act, 42 USC 11431. See the note regarding MSDS reporting below.
- g. A pupil who has been incarcerated in a county jail becomes a resident of the district where the county jail is located. The district where the county jail is located **may enroll** such a pupil and provide an education to that pupil. The FTE must be pro-rated.
- h. A child from a military family who has been placed in the home of the non-custodial parent or a person serving in loco parentis under special power of attorney while the custodial parent has been assigned to active duty (MCL 3.1041-3.1042) shall be enrolled in the district where the non-custodial parent or the person serving in loco parentis resides or the pupil may continue to attend the district where the pupil was enrolled when residing with the custodial parent prior to the active duty assignment. The child may be enrolled one month prior to the beginning of the parent's tour of active duty and may continue to be

enrolled up to six months following the completion of the parent's tour of active duty. (Active duty means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Sections 1209 and 1211.) The child of a veteran, who has been severely injured, medically discharged, or who has died as the result of injuries sustained while on active duty may continue to be enrolled for a period of one year following the discharge or death of the veteran. Tuition is prohibited.

**Note:** The residence of a person holding a power of attorney over a child does not, by itself, establish residency of the child. Under Section 1148 of the Revised School Code (MCL 380.1148), the child must be placed with a relative for the purpose of securing a suitable home and not for educational purposes. A child placed with a person other than a relative of the child under a power of attorney does not become a resident of the district.

**Note:** If a pupil who is currently attending a district becomes homeless, the residency code reported in MSDS does not change. If a pupil was a resident of a district, became homeless, relocated outside of the district's boundaries, and continued to attend school in the district, the residency code reported in MSDS does not change.

## **B) Nonresident Pupils**

A nonresident pupil is a pupil who resides outside of the school district boundaries and does not meet any of the criteria under "Resident Pupil." The educating district must have approval from the pupil's district of residence to count that pupil for membership purposes, unless the pupil meets one of the exceptions listed below, or any of the other exceptions under Section 6(6) of the State School Aid Act (MCL 388.1606).

### 1) District of Residence Approval Not Required

#### **a. Nonpublic Part Time Pupils**

Approval by the pupil's district of residence is not required for a nonpublic part-time pupil (shared time) in grades 1 to 12 enrolled in nonessential elective courses in accordance with Section 166b of the State School Aid Act (MCL 388.1766b). Shared-time pupils are enrolled under a cooperative agreement between the educating district and the nonpublic school. Shared-time pupils are counted by the educating district for that portion of time that they are enrolled in nonessential courses. (See Section 5-E of this manual.)

#### **b. Part-Time Pupil**

An inter-district split schedule pupil is a pupil who attends the resident district for part of the day and a second district for part of the day but not as part of a cooperative agreement. The sum of the FTE at both districts may not exceed 1.0 full FTE. The approval from the resident district is not required if such a pupil is receiving half or less of his or her pupil instruction at the nonresident district. The enrolling districts count the pupil on a pro-rata basis. (See Section 5-F of this manual.)

#### **c. Pupil Enrolled in a Public School Academy or Education Achievement System**

A pupil enrolled in a public school academy shall be counted in membership in the public school academy. A pupil enrolled in the education achievement system shall be counted in membership in the education achievement system. Approval by the pupil's district of residence is not required for those pupils enrolled in a public school academy or a education achievement system. These pupils are treated as "residents" of the educating district and shall not be charged tuition.

**Note:** If a public school academy has enrolled a special education pupil who resides in a district in an intermediate district other than the intermediate district where the public school academy is located, the pupil's resident district or resident intermediate district must provide the special education pupil special education services unless the public school academy or the intermediate district in which the public school academy is located has a written cooperative agreement with the resident district or the resident intermediate district for the provision of special education services, including the added costs.

**d. ISD Schools of Choice**

A nonresident pupil enrolled in an intermediate school district's schools of choice program under former State School Aid Act Sections 91 or 91a shall be counted by the educating district. At least 50% of the ISD constituent districts must continue to participate in the Schools of Choice pilot program under former Section 91. Such a district is exempt from Sections 105 and 105c. (See Section 5-J of this manual.)

**e. Section 105 and 105c Schools of Choice Pupils**

Pupils enrolled in a district other than the district of residence in accordance with Section 105 or Section 105c of the State School Aid Act (MCL 388.1705 or MCL 388.1705c).

**f. Criminal Sexual Assault or Serious Assault**

The resident district's approval is not required for a pupil who has made an official written complaint to law enforcement officials and to school officials (of the pupil's district of residence) that he or she has been the victim of a criminal sexual assault or other serious assault. This assault may have happened on school grounds or at a school function, or was committed by one or more other pupils enrolled in the district or by an employee of the district. This pupil may enroll in another district and be counted for membership by that educating district.

**g. Pupil Moved Out of the District**

A pupil whose district of residence changed after the pupil membership count date and before the supplemental count day and who continues to be enrolled on the supplemental count day as a nonresident in the district in which he or she was enrolled as a resident on the pupil membership count day of the same school year may be counted in membership by the educating district. This pupil **MUST** be reported as a nonresident.

**h. Alternative Education Program Pupils**

A pupil enrolled in an alternative education program who has been suspended or expelled from his or her resident district for any reason may be counted in membership. A pupil who has previously dropped out of school, is pregnant or is a parent, or has been referred to the program by the court may enroll in the alternative education program without the resident district's approval. (See Section 5-A of this manual.)

**i. Pupils Enrolled in the Michigan Virtual High School**

Pupils enrolled in courses through the Michigan Virtual High School are enrolled under a cooperative agreement between the Michigan Virtual High School and the educating district. The educating district counts pupils enrolled in these classes. The educating district is responsible for any fees and supplies.

**j. Child of an Employee**

A pupil who is the child of a person who works at the district or who is the child of a person who worked at the district as of the time the pupil first enrolled in the district but who no longer works at the district due to a workforce reduction may be counted. "Child" includes an adopted child, stepchild, or legal ward.

**k. Pupils Expelled From Other Districts**

An expelled pupil who has been denied reinstatement by the expelling district may be counted by a district that reinstates the pupil according to Section 1311 or Section 1311a of the Revised School Code-(MCL 380.1311 and 380.1311a). (See Section 5-N of this manual.)

**l. Pupils Enrolled in Middle College Program**

A pupil enrolled in a middle college program in a district other than the pupil's district of residence but that is in the same intermediate district as the resident district may be counted in membership without resident district approval.

**Note:** If the pupil's resident district is a first class district and the middle college program is held within the boundaries of that first class district, the enrolling district must have the approval of the resident district. (See Section 5-G-B of this manual.)

**m. Pupils in Olympic Training**

A pupil who is enrolled in a district other than his or her district of residence and attends an U.S. Olympic Education Center may be counted as a resident of the district where the Olympic training center is located.

**n. Pupils Placed in Foster Care**

A pupil enrolled in a district other than the pupil's district of residence pursuant to section 1148(2) of the revised school code, MCL 380.1148.

**o. Resident District Failed to Meet AYP**

A pupil who enrolls in a district other than the pupil's district of residence as a result of the pupil's school not making adequate yearly progress under the no child left behind act of 2001, Public Law 107-110.

**p. Cooperative Education Programs**

A pupil educated as part of a cooperative education program shall be counted in membership by the educating district unless specified otherwise in the cooperative agreement. (Examples of such programs may include, but are not limited to, special education center or non-center programs, career and technical education programs, and high school programs offered for pupils whose resident districts do not offer high school). The resident district is responsible for any tuition or other costs covered under the cooperative agreement. (See Section 5-B of this manual.)

**q. Pupils Educated by the Intermediate School District**

Special education pupils educated by the intermediate school district shall be counted by the ISD. General education pupils placed by a court or state agency in an on-grounds child caring institution or a juvenile detention facility under Section 24 of the State School Aid Act (MCL 388.1624) and being educated by the intermediate school district shall be counted by the ISD. A local district counts all other general education pupils.

**r. Pupils Educated at the Michigan Schools for the Deaf and Blind**

Pupils enrolled in the Michigan schools for the deaf and blind shall be counted by the ISD of residence.

**s. Special Education Center Program**

Pupils educated in a special education center program shall be counted by the district or intermediate district operating the center program.

2) District of Residence Approval Required

A district that enrolls a nonresident pupil that does not meet any of the exceptions above must have the approval of the resident district to count that pupil for membership purposes. Examples of pupils for whom the resident district's approval is required in order to count for pupil membership purposes are the following:

**a. Non-K12 Pupil**

A non-K12 pupil is a pupil whose resident district does not offer all grade levels kindergarten through 12. The educating district may have enrolled such a pupil in a grade level not offered by the non-K12 district or enrolled such a pupil in a special education program under a cooperative agreement with the resident district. A school district that enrolls a pupil in a grade level not offered by the district of residence and not as part of a cooperative program must have the approval of the district of residence in order to count the pupil. A district that enrolls a pupil in a grade level that is offered by the non-K12 district must have the approval of the resident district and report the FTE claimed in the "All Other" category in the Michigan Student Data System (MSDS) under "Residency Related Information."

**b. Parent Request**

A district that enrolls a nonresident pupil at the parent's request that does not meet any of the exceptions under Section B(1) above must have the approval of the district of residence to count the pupil for membership purposes.

**C) Statutory and Other References**

State School Aid Act:

MCL 388.1603(7)

MCL 388.1606

MCL 388.1624b

MCL 388.1651(a)(15)

MCL 388.1705

MCL 388.1705c

MCL 388.1711

MCL 388.1718

Revised School Code:

MCL 380.504

MCL 380.524

MCL 380.556

MCL 380.1148

MCL 380.1148a

MCL 380.1311g

MCL 380.1401

MCL 380.1406

MCL 380.1407

MCL 380.1411

MCL 380.1415

MCL 380.1416

Administrative Rules:

R 340.2

R 340.3

Other References:

McKinney-Vento Homeless Education Assistance Act of 2001, Pub. L. No. 100-77 § 11301, Stat. 482

Interstate Compact on Educational Opportunity for Military Children Act of 2008, MCL 3.1041-3.1042

No Child Left Behind (NCLB) Act of 2001, Pub. L. No. 107-110, § 115, Stat. 1425 (2002)

Appellate Court Decisions:

University Center, Inc. v. Ann Arbor Public Schools-386 Mich 210 (1971)  
Feaster v Portage Public Schools, 451 Mich 351 (1996)

Attorney General Opinions:

5004, May 1976  
5112, Dec 1976  
5574, Sept 1979  
5782, Sept 1980  
5925, June 1981  
5995, Oct 1981  
6316, Sept 1985  
7154, March 2004

## **D) Question and Answer**

### **Pupil Moves Out Of District After Count Day:**

**Q #1** The district currently does not accept nonresident pupils under schools of choice. However, the board will consider tuition enrollment for pupils who reside in the school district but move out prior to the end of the school year. When can tuition be charged for a resident pupil who moves out prior to the February supplemental count? What if the pupil moved out of the district following the supplemental count?

**A #1** Section 6(6)(g) of the State School Aid Act allows a pupil who had been a resident of the school district on the fall count day and moves out of the district prior to the supplemental count day but continues to attend the district in the current school fiscal year to be counted for membership purposes on the supplemental count day without the approval of the new resident district. Section 6(15) of the State School Aid Act forbids tuition being charged for such a pupil. A pupil moving after the supplemental count day would not have an impact on FTE count. Since the district is receiving full funding for such a pupil, the district would not be entitled to tuition. The pupil would be required to have the approval of the resident district for the next school fiscal year. Tuition may be optional at that time.

**Q #2** A pupil was a resident of District A on the fall count day, but the family moved to District B in November. The child was not enrolled in District B; however, the family disenrolled the child from District A and began to homeschool the child. Would Section 6(6)(g) allow the pupil to reenroll with District A through the end of the semester even though there was a break in enrollment?

**A #2** Section 6(6)(g) of the State School Aid Act permits a pupil who has moved out of the district after the count date to continue attending and be counted for membership purposes on the supplemental count date without the approval of the new resident district.  
There was a break in service when the parents decided to homeschool the pupil.

Therefore, this pupil requires the approval of the new resident district in order to be counted for membership on the supplemental count day.

### **Schools Of Choice:**

**Q #3** A family is enrolled in the district under schools of choice. The family received a foster child the first week of school. The schools of choice window had closed. Is there a way the district can enroll this foster child without the approval of the resident district?

**A #3** The application window is closed; however, if the district had unlimited slots in this child's grade level and if all other applicants have been enrolled (or at least given the opportunity to enroll), the district could appeal to the Department for a waiver to enroll this pupil under schools of choice by the end of the first week of school. However, if the schools of choice had limited slots and there are other pupils on a waiting list to be enrolled in the district under schools of choice, this child may be added to that waiting list. The pupil could be placed at the top of the list for the next opening as other members in the household have already been enrolled under schools of choice. Another option would be for the district to receive approval from the resident district to count the pupil.

**Q #4** A pupil's parents reside separately in two neighboring districts. The pupil has enrolled in a third district under schools of choice and will generate the lesser of the foundation allowance of the educating district and the resident district. Does Section 24b of the State School Aid Act have any impact on this?

**A #4** Section 24b strictly grants the child the right to enroll in either district in which the child's parents reside. Instead, the child has enrolled in a third district under schools of choice. Thus, Section 24b does not apply in this case and the child's resident district is the district where the custodial parent resides, or where the child is actually living. If the child were residing in both districts on an equal basis, either district would be considered the resident district for purposes of determining the foundation amount that will be generated.

**Q #5** Can a district advertise and enroll pupils under Section 105 or Section 105c for the third trimester?

**A #5** No. Current law only allows for the application window for fall enrollment and second semester or second trimester enrollment. Third trimester allocation/enrollment is not allowed for Section 105 or Section 105c.

### **Resident District Approval for Enrollment and Count Purposes:**

**Q #6** Does an early childhood developmentally delayed pupil need the approval of the resident district to enroll?

**A #6** If the preschool pupil is attending a district other than the district of residence and is not as part of a center type program configuration, he or she must have the approval of the resident district to enroll. If the preschool pupil were attending the district due to an IEP decision, the IEP would serve as the approval of the resident district.

**Q #7** Can a district enroll pupils as “tuition” pupils and charge them tuition for educating them? Would the district need the approval of the resident district?

**A #7** Tuition pupil simply means a nonresident pupil for whom tuition may be charged. Whether or not tuition may be charged depends upon several factors. A general education pupil enrolled under parent request who does not meet any of the exceptions in Section 6(6) of the State School Aid Act and does not meet any of the exceptions that allow a nonresident pupil to be counted as a resident of the district-must obtain the approval of the resident district in order to be counted in membership and may be charged tuition. A pupil who cannot obtain approval from the resident district may be enrolled and charged tuition; however, such a pupil cannot be counted in membership.

### **Enrolling Employees’ Children:**

**Q #8** The district’s school board has always allowed the children of teachers to attend with the permission of the resident district. Can the district ignore Section 6(6)(j) of the State School Aid Act and charge tuition?

**A #8** No, the district’s school board needs a policy regarding the enrollment of employees’ children. However, Section 6(6)(j) of the State School Aid Act permits these pupils to be enrolled and counted for membership purposes without the approval of the resident district. Section 6(16) of the State School Aid Act prohibits the enrolling district from charging tuition for these pupils.

**Q #9** Our district does not have room to accept the children of employees. Does Section 6(6)(j) of the State School Aid Act require that our district enroll the children of any employee who requests this?

**A #9** No, Section 6(6)(j) is permissive. Your district’s school board should have a policy so that equitable and fair treatment is used if and when your district does enroll children of employees.

**Q #10** The school district recently hired the parent of a schools of choice pupil. How should the district report the pupil in MSDS now that the pupil is enrolled as the child of an employee?

**A #10** The district would report the pupil in MSDS as “all other” nonresidents.

**Q #11** Some of the district’s school employees reside across the state line in another state. May the district enroll and count for membership purposes a child of such an employee?

**A #11** No, Section 6(6)(j) of the State School Aid Act allows the district to enroll a child of an employee without the approval of the resident district. However, the resident district would have to be a district in the State of Michigan. The State of Michigan has no obligation to educate resident pupils of another state. Also, the foundation allowance for nonresident pupils is the foundation allowance of the resident district. Since this pupil is from a district outside of the State of Michigan, there would be no foundation allowance.

**Q #12** If a district allows children of employees to attend, can the district limit the pupils to certain grade levels?

**A #12** Yes. There are going to be situations where a district might not reasonably be able to accommodate pupils in all grades.

**Child Has Dual Residency:**

**Q #13** May a district enroll a pupil as a resident if a former stepparent resides in the district?

**A #13** No. A former familial relationship, such as a former stepparent, would not satisfy the residency requirement. A relationship formed through birth or adoption remains intact regardless of a divorce, but a familial relationship formed through marriage ends with divorce.

**Q #14** A pupil's parents are divorced. The pupil resides with the mother across the state border and the father resides in a Michigan district. Can the Michigan district enroll the child?

**A #14** Yes, under Section 24b of the State School Aid Act and Section 380.1148a of the Revised School Code the child is a resident of the district where either parent (or legal guardian) resides regardless of which parent is the custodial parent.

**Child Resides With Relative:**

**Q #15** An elementary pupil resides with his grandmother in District A while the parents of the child reside in District B approximately 100 miles away. The grandmother has been granted a power of attorney to keep this child for the purpose of providing a suitable home. District A reported this pupil as a non-K12 pupil. District B is a K12 district. Should the district report this pupil as "schools of choice" instead?

**A #15** In this particular situation, the child resides with the grandmother (a relative) for the purpose of a suitable home. Thus, the child becomes a resident of District A.

**Child Resides With Friends:**

**Q #16** A single parent is being deployed to active military duty. This parent has signed a Delegation of Parental Authority appointing her best friend to act in loco parentis for her son for six months. The parent and child are from a neighboring state. Does the district report this child as a resident pupil?

**A #16** Yes. MCL 3.1041-3.1042 permits a pupil from a military family whose custodial parent has been assigned to active duty and has placed that child with the non-custodial parent or a person serving in loco parentis, through a special power of attorney executed under applicable law, to attend the district where that non-custodial parent or the person serving in loco parentis resides. The pupil may also continue to attend the district where the pupil had been enrolled and attending while residing with the custodial parent prior to the parent being

assigned to active duty. Tuition cannot be charged.

**Pupil's Legal Residence Is In Another State:**

**Q #17** The parent of an Olympic athlete has established residency in multiple states, but does not have residency in Michigan. If the parent grants the coach limited guardianship, may the district count the pupil for membership purposes?

**A #17** Section 6(6)(m) of the State School Aid Act permits a pupil who attends a United States Olympic education center to enroll in the district where the Olympic training center is located without the approval of the resident district. Such a pupil would be enrolled as a resident pupil.

**Senior In High School:**

**Q #18** Pupil has attended District A for several years up through her junior year. The family moved out of the district during the summer. The pupil would like to attend District A and graduate with her class. What documentation is required so this pupil may continue her senior year at District A?

**A #18** If District A is not schools of choice, the pupil will have to obtain approval from the new resident district before District A can count the pupil in membership. Another option would be for the parents to pay the full tuition amount and for the pupil not to be counted for membership purposes.