Basic Education Circular

SUBJECT: Determination of Residence of Children Living in Pennsylvania Institutions 24 P.S. §13-1308

DATE OF ISSUE: July 1, 2000 DATE OF EXPIRATION: June 30, 2004

REPLACES: Determination of Residence of Children Living in Pennsylvania Institutions, BEC 24 P.S. §13-1308, issued September 1, 1997

This circular describes the procedures for determining the place of residence of school-aged persons[1] who live in institutions in Pennsylvania, but whose parents or legal guardians reside outside Pennsylvania. The Department offers such children an opportunity to prove that they are Pennsylvania residents and, accordingly, are entitled to a free public education here.[2]

Any school-aged person living in an institution in Pennsylvania whose parent(s) or legal guardian resides outside Pennsylvania is entitled, on request, to departmental review of his or her place of residence. To obtain such review the child, either by his or her parent(s) or legal guardian or by a representative of the institution at which he or she lives, must write to the Secretary of Education stating why that child is believed to be a resident of Pennsylvania rather than a resident of the state where his or her parent(s) or legal guardian resides. The child shall also state the date on which he or she believes he or she became a Pennsylvania resident. The child shall have the burden of proof, and must enclose with the letter any affidavits or documents that support his or her claim to reside in Pennsylvania. The Secretary will appoint a designee who, after reviewing the documents submitted, will determine (1) the child's place of residence; (2) the date on which the child became a resident of that place; and (3) what entity must provide the child with an education.

In order to make these determinations the Secretary's designee will notify any Pennsylvania school district in which the child may reside, and any other entity which may be responsible to pay for the child's education, by forwarding to the school district and/or other entity a copy of the child's letter and accompanying documents. The Secretary's designee will inform all districts and other entities that they may respond within twenty days after receipt of the letter and accompanying documents. The Secretary's designee will review all timely responses submitted before rendering a decision regarding the child's place of residence. The Secretary's designee may request additional information or documentation relevant to the issue of the child's place of residence from the child, or from an entity that has responded after receiving notice from the Secretary's designee of the child's request for a determination of residence. Any such additional information or documentation must be supplied within twenty days of the date on which the request for it is received. The Secretary's designee will inform the child's representative in writing of the decision and the reasons for it. Both the child and a school district in which the child is found to reside, or any other entity which is required to pay for the child's education, may appeal the decision of the Secretary's designee to the Secretary within ten days after service of notice of the decision. If an appeal is taken, the parties are entitled to a hearing pursuant to the provisions in 1 Pa. Code §35.1 et seq.

---

[1] Hereafter "child" and "children" will be used interchangeably with "school-age persons" and "school-aged persons."

[2] The procedures described in this Circular comply with the Order of the United States District Court for the Eastern District of Pennsylvania entered in the action of Steven M. et al. v. Thomas K. Gilhool et. al., Civil Action No. 87-0604.

The determination of residency will be based on the presence of a child in the school district and an intent to remain in the school district or the Commonwealth indefinitely. Among the information that the Secretary's designee will take into account in making this determination are: where the child lives, why the child came to live there, whether the child intends to remain there indefinitely, and whether the child's parents intend for the child to remain there indefinitely. A determination that a child is a resident cannot be based solely on the fact that a child moved into the Commonwealth or a particular district because of the quality of education or other school-related purposes.

If the child is found to be a resident of the school district where the institution in which the child lives is located, the child is entitled to tuition-free education from that district. If the child is found to be a resident of a Pennsylvania school district other than the one in which the institution where he or she lives is located, the district of residence must pay any tuition charged for the child's education. If it is determined that the child resides in Pennsylvania but the particular school district in which the child resides cannot be fixed, then the Commonwealth shall pay any tuition charged for the child's education, as provided in 24 P.S. §13-1308.

During the pendency of proceedings to determine the residence of a child living in a Pennsylvania institution, the child shall be educated in the school district in which the institution is located. The institution shall pay any tuition charged.[3] If the child is found to be a resident of Pennsylvania, then the school district in which the child is found to reside shall reimburse any individual or entity for tuition the individual or entity has paid for the child for the period during which the child was the school district's resident. The Commonwealth shall reimburse the tuition for any period of residence of any child who is found to reside in Pennsylvania but whose district of residence cannot be determined.

The executive directors of all Pennsylvania intermediate units, superintendents of all Pennsylvania school districts and directors of area vocational-technical schools must ensure that the parent(s) or legal guardian of all children in their LEAs entitled to review of their place of residence under the procedures set forth in this BEC are informed that those children are entitled to that review. In addition, they shall provide the parent(s) and legal guardian of those children with a copy of this Circular.

REFERENCES:

Purdon's Statutes

24 P.S. §13-1308
1 Pa. Code §35.1 et seq.

Other:

Steven M. et al v. Thomas K. Gilhool et al., Civil Action No. 87-0604,
Order entered November 29, 1988, as amended by order entered May 23, 1989

[3] The institution need not, however, pay the tuition of medically indigent children hospitalized in exclusively charitable children's hospitals exempt under section 501(c)(3) of the Internal Review Code which make no charges to any of their patients not accept any third-party payments for services provided to any of their patients. The Commonwealth shall pay the tuition of these children during the pendency of proceedings to determine their place of residence.

CONTACT BUREAU/OFFICE:

School Services Unit
Pennsylvania Department of Education
333 Market Street
Harrisburg, PA 17126-0333
Phone: (717) 783-3750