

# Appendix K 1

## Determining a Student's Resident District for Students With a Disability (Active IEP or IFSP)

Students in evaluation-only status or who have a 504 Plan do not have an Individualized Education Program (IEP) and these provisions do not apply. Refer to Appendix K. Generally, students with a disability are considered residents of where they reside with the parent/legal guardian. Many students live with other than their parent/guardian. The district of residence must be determined to accurately calculate general education revenue, other state aids, levy authority, and in many cases, determine responsibilities for tuition.

### Rules of Thumb in Determining Residency for a Student with an IEP

- If the student has been considered homeless, the McKinney-Vento Act prevails.
  - If the student was placed by an out-of-state agency into Minnesota, the district needs to work with the placing agency from out-of-state to determine responsibility for instructional costs. This includes students placed into foster homes located in Minnesota.
1. First priority in Minnesota statutes and rules are the parents:
    - a. If a student is living with a parent whose parental rights have not been terminated, the district of residence is where the parent and student reside together.
    - b. If the student is in a foster facility, the resident district is the district where the parent with legal custody resides.
    - c. If the student is in a typical foster home situation and the parental rights are terminated, the district where the student resides is the district of residence.
    - d. If the student is in a foster facility and the parents are out-of-state, can't be located or are unknown then we use the second priority as noted below. (Minn. Stat. § 125A.17, subd. 1.)
  2. Second highest priority in statutes and rules is the legal guardian. This is a court appointed guardian or conservator, not a notarized statement by the parents. If there is a court-appointed guardian and the parental rights are terminated or the parent is not known, out-of-state or incarcerated in a Minnesota correctional facility including contract/operated halfway houses, then the district of residence is where the court appointed guardian or conservator lives.
  3. The last or lowest in priority is the commissioner of education. The commissioner has authority in certain situations to appoint or determine a district of residence. This is very seldom used and only in cases where there is no option.

The references are:

- Minnesota Statutes, section 125A.17, subdivision 1.
- Minnesota Statutes, sections 125A.515, 125A.15 and 125A.51.
- Minnesota Statutes, section 125A.11.
- Minnesota Statutes, section 127A.47.
- Minnesota Rules, chapter 3525.

## Definitions

For purposes of this document, **with a disability** means that the student has an IEP or Individual Family Service Plan (IFSP). A student in evaluation-only status or who has a 504 Plan does not have an IEP or IFSP and these criteria do not apply.

**Foster Home** is all day, 24-hour substitute care for children placed away from their parents or guardian and for whom a responsible county or tribal social services agency has court ordered placement and care responsibility for an indefinite amount of time. A child may be placed in a foster family home, foster home of a relative or preadoptive home. Instruction is not provided at the foster home.

 **Foster Facility or Group Home** is all day 24-hour, substitute care for children placed away from their parents or guardian and for whom a responsible county or tribal social services agency has court ordered placement and care responsibility to a group home, emergency shelter or a residential facility. The facility has employees that work at the site for wages or salary. There is no instruction provided on site.

 **Residential Care and Treatment** is a facility all day 24-hour, substitute care for children placed away from their parents or guardian and for whom a responsible county or tribal social services agency has court ordered placement into a residential facility. Instruction is provided on site.

**Guardianship or Conservatorship.** When the parent is not available or whereabouts are unknown, then there could be a guardianship or conservatorship in place to determine the district of residence. Typically a **conservatorship** is issued by a judge for students who are at the age of majority (ages 18-21). If the parent's location is not known or the parent resides out of state, then a conservatorship issued by a Minnesota court would apply to determine residency; the resident district would be the district in which the conservator lives.

A **guardianship** is issued by the courts when the parent is not known or when the child is in protective custody. If the parent's whereabouts are not known and a Minnesota court has appointed a guardian then the physical location of the guardian may be used to determine residency of a student. A court needs to approve a guardianship for it to be used in residency; a notarized statement by the parents without court approval is not a legal guardianship to determine residency.

**Special Pupil.** If the student is a special pupil (see Data Elements), then the guardianship does not apply as the student is a resident of the district where the student resides.

**Parent.** Parent, in this document, means the biological or adoptive parent of the student. There are times when parental rights have not been terminated and a court appoints a guardian or conservator. In this case the parent's residence determines the student's residency. However, if the parent resides outside Minnesota or parental rights have been terminated, the resident district is where the guardian or conservator lives.

The resident district is financially responsible for the instructional costs of students with a disability. For residents of Minnesota served by a Minnesota public school Minnesota Department of Education (MDE) tuition billing applies.

Minnesota Statutes, section 120A.22, subdivision 3(e):

If a district reasonably believes that a student does not meet the residency requirements of the school district in which the student is attending school, the student may be removed from the school only after the district sends the student's parents written notice of the district's belief, including the facts upon which the belief is based, and an opportunity to provide documentary evidence of residency in person to the superintendent or designee, or, at the option of the parents, by sending the documentary evidence to the superintendent, or a designee, who will then make a determination as to the residency status of the student.

 At times there is a court order that states that the sole legal and physical custody of the child is transferred to a specific person. This person becomes the parent for all intents and purposes. The biological parent's rights may not be specifically terminated and may be allowed visitation. The student would be a resident of the district where the person with sole legal and physical custody is living.

## Examples

Students with a disability who have a legal guardian are still considered residents of the district in which the parent lives unless parental rights have been terminated.

### Reside With Parent

1. Students with a disability living with their parents/legal guardians are considered residents of the district in which their parents/legal guardians live. (Minn. Stat. § 120A.20, subd. 1.) A post office box does not establish residency, a physical address is needed with the exception of families in the Safe at Home program. See #2.
2. Safe at Home is a program by which an eligible family's mailing address is a post office box in St. Paul. Participating families need not provide a complete physical home address but they must provide the name of the district in which they live for purposes of enrolling in school. Participants are issued an identification card by the Secretary of State's office that can be shared with the school district verifying that the family is a Safe at Home participant.
3. Students with a disability living with a legal guardian are residents of the district in which the parent resides, unless parental rights have been terminated or the parent moves out-of-state after a guardian has been appointed.
4. Students who live with parents outside Minnesota are considered non-Minnesota residents for purposes of generating state aid. (State Aid Category (SAC) 15) This includes extended family trips. For example, students traveling outside Minnesota who want to take Online Learning (OLL) courses are considered non-Minnesota residents while they are outside Minnesota and are ineligible to generate Minnesota state aid.
5. Students who are not physically living in Minnesota are non-Minnesota residents for purposes of generating state aid. (SAC 15) This includes students who are living in other states or as foreign exchange students in another country.

 **Homeless**

The designation of homelessness is made by the district's or charter school's homeless liaison.

1. Homeless students with a disability are considered residents of the district in which the parent or legal guardian resides, unless:
  - a. Parental rights have been terminated by court order;
  - b. The parent or guardian is not living within the state; or
  - c. The parent or guardian having legal custody of the child is an inmate of a Minnesota correctional facility or is a resident of a halfway house under the supervision of the commissioner of corrections.

If any of clauses (a) to (c) apply, the school district of residence shall be the school district in which the pupil resided when the qualifying event occurred. If no other district of residence can be established, the school district of residence shall be the school district in which the pupil currently resides. If there is a dispute between school districts regarding residency, the district of residence is the district designated by the commissioner of education. (Minn. Stat. § 120A.20, subd. 2. (b).)

### Divorced Parents/Shared Custody

1. Students with a disability whose parents are divorced are considered residents of the district in which the student primarily resides with a parent for the greater part of the school year.
2. Parents who share joint physical custody of students with a disability are responsible to designate the district of residence. On the days during which the student is physically in the nonresident district, the parent is responsible for transporting the student to the border of the resident district. (Minn. R. § 3525.0210, subp. 39 and Minn. Stat. § 127A.47, subd. 3.)

### Parental Rights Terminated

1. Students with a disability living in a foster facility and who meet any of the following criteria are considered special pupils and are residents of the district in which the students live. (Minn. Stat. § 125A.17, subd. 1.) Students may be eligible for full state payment. (Minn. Stat. § 125A.75, subd. 3.)
  - a. Parental rights have been terminated, this also includes parental rights terminated or permanently suspended by Minnesota-based Tribal courts, or
  - b. Parent or guardian isn't living in Minnesota (parents moved out of Minnesota after the student placement or are deceased), or
  - c. No other district of residency can be established, or
  - d. Parent/guardian is an inmate of a Minnesota correctional facility or a halfway house.
2. Students with a disability who are wards of a Minnesota county are usually in protection and parental rights have not been terminated. Students are residents of where the parent lives. Districts need to verify the parent's status with county Human Services. However, if parents move outside of Minnesota after the county takes custody, the student is a resident of the district in which the student is living because the state of Minnesota has taken control of student's care and nurturing. (Minn. Stat. § 125A.17.)
3. Students with a disability who are wards of a Minnesota county and who are placed out-of-state for care and treatment by the courts or Department of Human Services (DHS) are residents of the district

designated by the commissioner. (Minn. Stat. § 125A.15.) The resident district is usually the last district to provide education.

4. Students with a disability who are wards of the state of Minnesota and who are placed out-of-state for care and treatment by the courts or Department of Human Services (DHS) are residents of the district designated by the commissioner. (Minn. Stat. § 125A.15.) The resident district is usually the last district to provide education. (Parental rights have been terminated; this also includes parental rights terminated or permanently suspended through the Minnesota-based Tribal courts). Students may be eligible for full state payment. (Minn. Stat. § 125A.75, subd. 3.)

### Foster Home or Foster Facility

1. Students with a disability who are placed in a foster home or foster facility by a Minnesota agency are residents of the district in which the parent lives for Minnesota Automated Reporting Student System (MARSS) reporting and tuition billing purposes. However, for purposes of open enrollment transfers, these students are eligible for waived deadlines under Minnesota Statutes, section 124D.03. (Minn. Stat. § 125A.17.)
2. Students with a disability who are placed in a foster home or foster facility by a Minnesota agency and whose parents are divorced are residents of the district in which the parent, who has physical custody, resides. If parents have joint physical custody, the parents are responsible to designate the district of residence. (Minn. R. § 3525.0210, subp. 39 and Minn. Stat. § 127A.47, subd. 3.)
3. Students with a disability who are placed in a foster home or foster facility by a Minnesota agency and whose parent is homeless is a resident of the district in which the parent is living, if it can be determined. If the parent's location is unknown, the student is a resident of the district in which the student is living. (Minn. Stat. § 125A.17.)
4. Students with a disability placed in a foster home or foster facility by a Minnesota agency and then whose parents subsequently move out of the state of Minnesota are considered residents of the district in which the student resides because the state has taken control of the student. (Minn. Stat. § 125A.17.)
5. Students with a disability placed in a foster home or foster facility by a non-Minnesota agency are considered non-Minnesota residents. (SAC 15) Prior to accepting students from outside Minnesota, foster facilities must determine who will be responsible for the student's instructional costs.

To be eligible for reimbursement, the serving school district, as part of its child intake procedures, must demonstrate a good faith effort to obtain from the placing agency a financial commitment to pay tuition costs. (Minn. Stat. § 125A.79, subd. 4.)

### Parent Choice

1. Students with a disability who live with other than the parent/legal guardian are residents of the district in which the parent/legal guardian lives. The parent may have provided a notarized statement giving the adult with which the student is living power of attorney, but unless parental rights are terminated, the notarized statement only gives the non-parent adult access to the student's educational records. The notarized statement does not constitute residency for purposes of a public education in that district. (SAC 20 or 21 if parent resides in Minnesota, SAC 15 if parent resides outside Minnesota.)
2. Students with a disability who transfer through an attendance option program to a nonresident district and are subsequently enrolled in a third district (e.g., Area Learning Center (ALC)) are residents of the district in which the parent/legal guardian resides. (Minn. Stat. § 120A.20, subd. 1.)

3. Students with a disability who have not been placed for care and treatment, are not living in a foster home and parents live outside the state of Minnesota are considered non-Minnesota residents and do not qualify for general education revenue. Districts can bill the state where the parent/guardian resides for reimbursement. (SAC 15). (Minn. Stat. § 125A.79, subd. 4.)

## Foreign Students

Undocumented aliens are entitled to enroll in school and generate state aid per federal law. It is a violation of federal law to request a student's immigration/visa status. See Plyler vs. Doe. These students are considered residents of the district in which they live.

1. Students with a disability enrolled in the district with a J-1 visa through a registered cultural exchange program are considered residents of the district that enrolls the student. (SAC 02). (Minn. Stat. § 126C.05, subd. 2.) For a list of registered programs go to the [Office of the Minnesota Secretary of State \(SOS\) website](http://www.sos.state.mn.us) (<http://www.sos.state.mn.us>). If the enrolling district is a charter school, one of the state academies, joint powers school or Perpich School for the Arts, the resident district is the district in which the school is geographically located. The enrolling school would be aware of the visa because of paperwork that precedes the student's enrollment.
2. Students with a disability enrolled in the district with a J-1 visa through a cultural exchange program that is not registered with the Secretary of State's Office are considered non-Minnesota residents. (SAC 15). (Minn. Stat. § 126C.05, subd. 2.) For a list of registered programs go to the SOS website. The enrolling school would be aware of the visa because of paperwork that precedes the student's enrollment.
3. Students with a disability enrolled in the district with an F-1 visa are considered foreign students and are considered non-Minnesota residents. Federal law requires the enrolling school charge full tuition for these students. (SAC15) The enrolling school would be aware of the visa because of paperwork that precedes the student's enrollment.
4. Students in Minnesota under a B (visitor's visa) are considered non-Minnesota residents (SAC 15) even though they may be here with a parent. It is a violation of federal law to request a student's immigration/visa status. Therefore, it will only be known that the student has a visitor's visa if the family volunteers the information. If the school does not enroll the student, it may allow the student to visit the school and participate in some of the activities, but the student would be ineligible to generate state aid.

## Care and Treatment Placements

Care and treatment is defined in Minnesota Rules, chapter 3525.2325, subpart 1D:

For purposes of this part, pupils and regular education students placed in the following facilities by someone other than the district are considered to be placed for care and treatment:

- a. Chemical dependency and other substance abuse treatment centers.
- b. Shelter care facilities.
- c. Home, due to accident or illness.
- d. Hospitals.
- e. Day treatment centers.
- f. Correctional facilities.
- g. Residential treatment centers.

- h. Mental health programs.

## Placed in a Minnesota Care and Treatment Facility

### ***Placed by Parent or Medical Authority***

1. Students with a disability temporarily placed for care and treatment in either a day program or a residential facility are residents of the district in which the parents live. (SAC 27 or 28). (Minn. Stat. § 125A.15 (a) and Minn. R. § 3525.0210, subp. 39.)
2. Students with a disability who transfer via an attendance option program to a nonresident district, and are subsequently placed in a third district, are residents of the district in which the parent resides. (SAC 27 or 28). (Minn. Stat. § 125A.15.)
3. Irrespective of which parent has legal custody, the district in which the parent who has physical custody resides is considered the student's resident district. If parents have joint physical custody the parents must designate the district of residence. (SAC 27 or 28). (Minn. R. § 3525.0210, subp. 39 and Minn. Stat. § 127A.47, subd. 3.)
4. Students with a disability who are placed for care and treatment in either a day program or a residential facility and whose parents are homeless are residents of the district in which the parent is living. (SAC 27 or 28). (Minn. Stat. § 120A.20, subd. 2(b), Minn. Stat. § 125A.15 (a) and Minn. R. § 3525.0210, subp. 39.)

### ***Placed by a Minnesota Agency, Courts or Human Services***

1. Students with a disability who are placed for care and treatment by a Minnesota entity in either a day program or a residential facility and whose parents are homeless and cannot be located are residents of the district in which the student is living (SAC 27 or 28).

### ***Placed by a Non-Minnesota Entity***

1. Students with a disability temporarily placed by a non-Minnesota entity for care and treatment or foster home or foster facility and whose parents reside outside Minnesota are non-Minnesota residents. The placing entity is responsible for assuring tuition is covered. (SAC 15). (Minn. Stat. § 125A.15 and Minn. Stat. § 125A.79, subd. 4.)
2. Students with a disability who are wards of another state placed into a Minnesota district are considered non-Minnesota residents. The placing entity is responsible for assuring tuition is covered. (SAC 15). (Minn. Stat. § 125A.79, subd. 4.)
3. Students with a disability and who are wards of the state of Minnesota and living in a foster home or foster facility and enrolled in a Minnesota school district are residents of the district in which they live (parental rights have been terminated; this also includes parental rights terminated or permanently suspended through the Minnesota based Tribal courts). (Minn. Stat. § 125A.17.)

## Placed in a Non-Minnesota Care and Treatment Facility



### ***Placed by Parent or Medical Authority***

1. Students with a disability placed by the parent for care and treatment outside Minnesota are eligible to generate state aid and would be reported on MARSS. The resident district is responsible for instructional

costs. The student would be reported on MARSS if the resident district was billed for instructional costs. If there is no billing, they would not be reported.

### ***Placed by a Minnesota Agency, Courts or Human Services***

1. Students with a disability placed by a Minnesota agency into a care and treatment facility outside of Minnesota and whose parents reside outside Minnesota are considered residents of the district that last provided education or the district designated by the commissioner.

### **Placed by a Non-Minnesota Entity**

1. Students with a disability temporarily placed by a non-Minnesota entity for care and treatment in non-Minnesota care and treatment and whose parents reside outside Minnesota are non-Minnesota residents. The placing entity is responsible for assuring tuition is covered. (SAC 15). (Minn. Stat. § 125A.15 and Minn. Stat. § 125A.79, subd. 4.)

### **Parent Placed for Treatment**

Students with a disability who live with a parent and the parent has been placed in a residential treatment program are residents of the district in which the parent's treatment program is located.

### **Students Age 18 through 21**

1. Students with a disability age 18 through 21, Minnesota Rules, chapter 3525.0800, subpart 9 states: For a pupil who is age 18 through 21 years of age and is receiving special education, the district where the pupil's parents, legal guardian, or conservator lives shall be financially responsible [and considered the resident district].
2. Students with a disability who meet the following criteria are considered residents of the district in which the parent/legal guardian lives. (Minn. Stat. § 120A.22, subd. 3(c).)
  - a. Are age 18 or older, and
  - b. Are unmarried, and
  - c. Are a parent, and
  - d. Are placed for care and treatment.
3. The students' child (student refers to student in 2c above) would be a resident of the district where the child's parents (i.e., the student) live.

### **Married Students**

1. Students with a disability who are age 18 or older and married are residents of the district in which the students live. (Minn. Stat. § 120A.22, subd. 3(d).)
2. Students with a disability who are under the age 18 and married are residents of the district in which the parents/guardians reside.