

**§5205. Other exceptions to the general residency rules**

The following exceptions apply in determining a student's right to attend a school in a school administrative unit other than the one in which the student has permanent residence. [PL 1981, c. 693, §§5, 8 (NEW).]

**1. State wards.** A state ward shall be considered a resident of the unit where placed. [PL 1981, c. 693, §§5, 8 (NEW).]

**2. Other students not living at home.** A student other than a state ward, a state agency client or a homeless child, residing with another person who is not the student's parent, is considered a resident of the school administrative unit where the student resides if the superintendent of the unit determines that it is in the best interest of the student because that person is residing in the school administrative unit for other than just education purposes and:

- A. It is undesirable and impractical for that student to reside with the student's parent; [PL 2011, c. 502, §1 (AMD).]
- B. [PL 2011, c. 502, §1 (RP).]
- C. There is a safety reason for the student not to reside with the student's parent; or [PL 2011, c. 502, §1 (NEW).]
- D. Other extenuating circumstances exist that justify residence in the unit. [PL 2011, c. 502, §1 (NEW).]

If a person who is not the student's parent or legal guardian requests that a student be considered a resident under this subsection, the school administrative unit shall take reasonable steps to attempt to notify a parent or legal guardian of the request.

In determining whether it is in the best interest of the student to enroll in the school administrative unit, the superintendent shall consult with knowledgeable employees of relevant school administrative units that the superintendent considers appropriate.

The superintendent shall send written notice of the enrollment determination to the person making a request within 10 calendar days of receiving the request to enroll a student pursuant to this subsection. If the determination is to deny enrollment because the superintendent determines that enrollment in the school administrative unit is not in the best interest of the student as provided in this subsection, the superintendent shall send to the person who made the request written notice of the denial of enrollment, the reason for the denial and the right to appeal to the commissioner.

The commissioner shall review the superintendent's determination on appeal by the student's parent or legal guardian or the person with whom the student is residing and shall make a decision within 7 calendar days of receiving the appeal. The commissioner's decision is final and binding. Upon request of the superintendent of schools in the unit in which a student is placed in accordance with this subsection, the state share percentage for subsidized educational costs for that student is equivalent to the state share percentage of the unit in which the student's parent or legal guardian resides or the average state share percentage, whichever is greater. If the parent or legal guardian does not reside in the State or can not be located, the subsidy is the state average subsidy. [PL 2011, c. 502, §1 (AMD).]

**3. Students placed by state agencies.** A student who is placed by a state agency in a residential placement other than a residential treatment center, as defined in section 1, subsection 24-A, paragraph D, subparagraph 3, is considered a resident of the school administrative unit where the residential placement is located.

- A. [PL 1997, c. 326, §2 (RP).]
- B. [PL 1997, c. 326, §2 (RP).]

[PL 1997, c. 326, §2 (AMD).]

**3-A. Students placed by the Department of Health and Human Services.** Notwithstanding subsection 3, a student who is placed by the Department of Health and Human Services with an adult who is not the child's parent or legal guardian in accordance with the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110-351, 122 Stat. 3949 is considered a resident of either the school administrative unit where the student resides during the placement or the school administrative unit where the student resided prior to the placement based on the best interest of the student. The Department of Health and Human Services, in consultation with the department and the school administrative units, shall determine which of the 2 units is appropriate and notify that unit in writing of its determination. The school administrative unit that provides public education for the student shall count the student as a resident student for subsidy purposes.

[PL 2009, c. 508, §1 (NEW).]

**4. Students living at light, fog warning or life stations.** A student living at any light, fog warning or lifesaving station shall be considered a resident of the school administrative unit where the student chooses to enroll.

[PL 1981, c. 693, §§5, 8 (NEW).]

**5. Temporary residents.** A student who temporarily resides in a school administrative unit shall be considered a resident of that school unit if the student is living with a parent who, because of employment, moves from place to place. This subsection may not be construed to abridge that student's rights in the school administrative unit where the student permanently resides.

[PL 1981, c. 693, §§5, 8 (NEW).]

**6. Transfer students.** The following provisions apply to transfers of students from one school administrative unit to another.

A. Two superintendents may approve the transfer of a student from one school administrative unit to another if:

- (1) They find that a transfer is in the student's best interest; and
- (2) The student's parent approves.

The superintendents shall notify the commissioner of any transfer approved under this paragraph. If either of the superintendents decides not to approve the transfer, that superintendent shall provide to the parent of the student requesting transfer under this paragraph a written description of the basis of that superintendent's determination. [PL 2013, c. 456, §1 (AMD).]

B. On the request of the parent of a student requesting transfer under paragraph A, the commissioner shall review the transfer. The commissioner shall review the superintendents' determinations and communicate with the superintendents and with the parent of the student prior to making a decision. The commissioner may approve or disapprove the transfer and shall provide to the parent of the student and to the superintendents a written decision describing the basis of the commissioner's determination. [PL 2013, c. 456, §2 (AMD).]

C. The superintendents shall annually review any transfer under this subsection. [PL 1981, c. 693, §§5, 8 (NEW).]

D. For purposes of the state school subsidy, a student transferred under this subsection is considered a resident of the school administrative unit to which transferred. Upon request of the superintendent of schools in the unit in which a student is placed in accordance with this subsection, the state share percentage for subsidized educational costs for that student is equivalent to the state share percentage of the unit in which the student's parent or legal guardian resides or the average

state share percentage, whichever is greater. If the parent or legal guardian does not reside in the State or can not be located, the subsidy is the state average subsidy. [PL 1991, c. 365, §2 (AMD).]

E. A school administrative unit may not charge tuition for a transfer approved under this subsection. [PL 1981, c. 693, §§5, 8 (NEW).]

F. If dissatisfied with the commissioner's decision, a parent of a student requesting transfer or either superintendent may, within 10 calendar days of the commissioner's decision, request that the state board review the transfer. The state board shall review the superintendents' determinations and communicate with the commissioner, the superintendents and the parent of the student. The state board may approve or disapprove the transfer. The state board shall make a decision within 45 calendar days of receiving the request and shall provide to the parent of the student, the superintendents and the commissioner a written decision describing the basis of the state board's determination. The state board's decision is final and binding. [PL 2013, c. 456, §3 (AMD).]

G. Notwithstanding paragraph D, if the commissioner or state board approves a transfer under this subsection and the student subject to the transfer is receiving special education services, the state subsidy of special education costs for the transferred student may not be reduced as a result of the transfer. [PL 2015, c. 448, §10 (NEW).]

A transfer under this subsection may not be made to a receiving school administrative unit that does not operate a public school that includes the grade level of the student whose parent requests the transfer, unless the superintendents of both the sending and receiving school administrative units approve the transfer.

[PL 2015, c. 448, §10 (AMD).]

**6-A. Interdistrict enrollment policies.** The school boards of 2 or more school administrative units may adopt mutual policies allowing the transfer of students, with parental approval, among the participating units. The policies must set forth procedures and standards governing the transfers, including but not limited to the school year or years in which the policy applies, application procedures and standards of responsibility for transportation and special education. Each school board adopting a policy under this subsection shall file a copy of the policy with the department prior to the effective date of that policy and shall provide timely notice of the policy to residents of the school administrative unit governed by that school board. For the purposes of chapter 606-B, a student transferred under this subsection is considered a resident of the school administrative unit to which the student transferred. [PL 2011, c. 651, §1 (NEW).]

**6-B. Education service center enrollment policies.** Members in an education service center, as defined in section 3801, subsection 1, paragraph B, may adopt a mutual policy allowing the transfer of students, with parental approval, among the member school administrative units. The mutual policy must set forth procedures and standards governing the transfers, including but not limited to the school year or years in which the policy applies, application procedures and standards of responsibility for transportation and special education. Each member school board that adopts the mutual policy under this subsection shall post a copy of the mutual policy on the school administrative unit's publicly accessible website and shall provide timely notice of the policy to residents of the school administrative unit governed by that school board. For the purposes of chapter 606-B, a student transferred under this subsection is considered a resident of the school administrative unit to which the student transferred. [PL 2019, c. 219, §5 (AMD).]

**7. Homeless students.** Pursuant to section 261, the commissioner may adopt rules to ensure that each homeless student has unrestricted access to the free public education afforded by section 2, subsection 1. The rules must implement the requirements and policies of the McKinney-Vento Homeless Education Assistance Improvement Act of 2001, 42 United States Code, Section 11431 et seq., and may be adopted as part of or in conjunction with the required state plan. The rules must include, but are not limited to, provisions for the resolution of disputes regarding the educational

placement of homeless students according to the best interest of homeless students, provisions that homeless students receive services comparable to services offered to other students in the schools they attend, provisions to address transportation and health records as a barrier to school admission and other provisions required by United States Code, Title 42, Section 11431.

[PL 2003, c. 477, §4 (AMD).]

**8. Students attending Maine School of Science and Mathematics.** For purposes of subsidy calculation only, students attending the Maine School of Science and Mathematics are not considered residents of the sending school administrative unit.

[PL 1993, c. 706, Pt. A, §3 (NEW).]

**9. Foreign exchange student.** A student who is not a resident of the State is considered a resident of the school administrative unit where the student resides if the superintendent has approved the acceptance of the student as a foreign exchange student and the student is attending the school at public expense. For the purposes of this subsection, "foreign exchange student" means a student who has been approved for a J-1 visa to participate in the Exchange Visitor Program for secondary school students pursuant to the provisions of the federal Mutual Educational and Cultural Exchange Program under 22 United States Code, Chapter 33 and 22 Code of Federal Regulations, Section 62.25.

[PL 2011, c. 678, Pt. E, §1 (NEW).]

**10. Student who is not a resident.** Except for a student accepted as a foreign exchange student pursuant to subsection 9, a student who is not a resident of the State and who while not attending school resides and whose parents reside outside the State is not counted for purposes of essential programs and services under chapter 606-B.

[PL 2011, c. 678, Pt. E, §1 (NEW).]

**11. Students attending the Maine School for Marine Science, Technology, Transportation and Engineering.** For purposes of subsidy calculation only, students attending the Maine School for Marine Science, Technology, Transportation and Engineering are not considered residents of the sending school administrative unit.

[PL 2015, c. 363, §3 (NEW).]

**12. Military-connected student.** Notwithstanding any provision to the contrary in chapter 901, a military-connected student whose parent is transferred or is pending transfer to the State while on active military duty pursuant to an official military order is considered a resident of the school administrative unit in which the address identified by the parent pursuant to paragraph C is located. For the purposes of this subsection, "military-connected student" has the same meaning as in section 6991.

A. A school administrative unit shall accept applications by electronic means for enrollment under this subsection, including enrollment in a specific school or program within the school administrative unit, and course registration. [PL 2021, c. 248, §2 (NEW).]

B. The parent of a military-connected student shall provide proof of residence in the school administrative unit within 10 days after the arrival date provided on the parent's official military order. [PL 2021, c. 248, §2 (NEW).]

C. A parent may identify any of the following as an address in the State for the purposes of this subsection:

(1) A temporary lodging facility on a military installation as defined in section 20102;

(2) A purchased or leased house or apartment; or

(3) Federal Government or public-private venture military housing. [PL 2021, c. 248, §2 (NEW).]

[PL 2021, c. 248, §2 (NEW).]

## SECTION HISTORY

PL 1981, c. 693, §§5,8 (NEW). PL 1985, c. 797, §33 (AMD). PL 1991, c. 365, §§1,2 (AMD). PL 1991, c. 608, §3 (AMD). PL 1993, c. 706, §A2 (AMD). PL 1997, c. 326, §2 (AMD). PL 2003, c. 477, §4 (AMD). PL 2009, c. 508, §1 (AMD). PL 2011, c. 502, §1 (AMD). PL 2011, c. 651, §1 (AMD). PL 2011, c. 678, Pt. E, §1 (AMD). PL 2013, c. 337, §§1, 2 (AMD). PL 2013, c. 356, §1 (AMD). PL 2013, c. 424, Pt. J, §1 (AMD). PL 2013, c. 456, §§1-3 (AMD). PL 2013, c. 561, §1 (AMD). PL 2015, c. 363, §3 (AMD). PL 2015, c. 448, §10 (AMD). PL 2017, c. 284, Pt. VVVVV, §7 (AMD). PL 2019, c. 219, §5 (AMD). PL 2021, c. 248, §2 (AMD).

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