

Out-of-District Manual

Residency

When a child with a disability is placed by a public agency into an eligible facility, the child's administrative unit of residence is responsible for IEP review meetings, re-evaluation, re-determination of eligibility and for the payment of special education tuition or excess costs, *ECEA Rules 8.03(1), 8.04(1)(c), 8.05(1)(c), 8.06(1)(c)*.

- Special education students who are placed in group homes, residential child care facilities, hospitals, day treatment programs, Colorado Mental Health Institutes or Colorado School for the Deaf and the Blind are considered residents of the school district where their parents (or guardians) live, *ECEA Rules 2.02(1)(a)*.
- Students who are placed in foster homes (regardless of special education status) are considered residents of the administrative unit where the foster home is located, *ECEA Rules 2.02(1)(c)*.

A publicly placed special education student is considered a resident of the administrative unit where the student lives/sleeps at night (where the facility is located for residential placements) in the following circumstances: *ECEA Rules 2.02(1)(b)*

- parental rights are terminated by a court or relinquished by the parent(s);
- parents are incarcerated;
- parents cannot be located;
- student is legally emancipated;
- parents have moved out-of-state since the child was placed and a Colorado county department of social services maintains custody
- parents are deceased

Students in circumstances described above are often referred to as "educational orphans."

The "Residency and Responsibility chart that is part of this manual addresses the most common residency situations and can be used as a reference for determining residency status.

Other factors for consideration:

- If a student has an Educational Surrogate Parent (ESP), the administrative unit of residence is where the student lives, not that of the ESP.
- If parents are divorced, have joint or shared custody and live in different administrative units, residency, and therefore responsibility, may need to be shared. The two districts must agree who will count the student and who will pay. If districts agree to split the responsibility and/or funding, the facility must have separate contracts with each district.
- The fact that a student has a Guardian Ad Litem (GAL) appointed by the court does not necessarily have an effect on residency. GALs can be appointed for many reasons that do not affect the status of parental rights. It cannot be assumed that just because a student has a GAL, he/she is an educational orphan.

- The legal status of parental rights is the key factor in determining residency status. The fact that parents are not involved or that there has been an informal living arrangement (not approved by the court) with a relative or friend does not necessarily affect residency status.
- If placement with a relative is approved by the court, (often referred to as Kinship care), the Kinship placement should be treated as a foster home placement. The district of residence for that child becomes the responsibility of the district in which the kinship home is located.
- If a student has been attending a district through schools of choice, prior to placement in the facility, responsibility for the student must be consistent with district policies regarding all choice students. In many cases, the district who accepted, counted and had been serving the student will maintain responsibility through the end of the school year. If responsibility is to transfer back to the district where the parents live, the two districts or administrative units need to communicate and ensure a smooth transition so there is not gap in the acceptance of responsibility for the student.

Administrative Unit Information

- The administrative unit of attendance is responsible for the initial evaluation when a child is placed into the facility as a non-special education student and then referred for initial evaluation. Responsibility for initial assessment, eligibility, and disability determination is with the administrative unit of attendance, which shall invite the special education director or designee of the administrative unit of residence, *ECEA Rules 8.02(1)*.
- If there are court orders describing parents' rights, the school district should obtain a copy of such order to verify who has educational decision making authority for the youth. This may also help to clarify residency issues.
- The child's administrative unit of residence is responsible for reevaluation and special evaluations for triennials, change of placement reviews or if there is a need for a change in the student's identified disability *ECEA Rules 8.04(1)(c)*.
- It is the responsibility of the administrative unit of residence to determine whether the eligible facility where the child has been placed has the available special education services and related services specified by the child's IEP, *ECEA Rules 9.03(2)(a)(ii)*.
- If a student's IEP requires services that are not included in the facility's excess cost rate, the AU of residence is responsible to pay for or provide the services (i.e. speech language services, OT, PT, etc.) *9.03(2)(a)(i)*.
- A student who had been home schooled prior to placement is still entitled to a public education. The district of residence would become responsible at the time of placement.
- An administrative unit has the right to verify residency through reasonable means prior to signing excess cost contracts or making payments. Information from caseworkers or client managers should be sufficient. Lack of parent action does not absolve the district of its responsibility if appropriate verification of parent address has been provided by a case worker. For example, a district may ask a parent to come to the school or central office to register the child, but the district is still obligated to fulfill its responsibilities (i.e. assessments, IEP, excess costs, etc.) even if the parent does not comply.
- If a student is placed by a county department of social services or by the Division of Youth Corrections, the placing agency is responsible to notify the administrative unit of residence of the placement.

Facility Information

- If there are court orders describing parents' rights, the facility should obtain a copy of such order to verify who has educational decision making authority for the child. This may also help to clarify residency issues.
- It is the responsibility of the placing agency to notify administrative units of any changes in the status of parental rights or residence of the parent. However, as best practice, the facility should coordinate with the placing agency in any way possible to ensure notification is made because any change in parental rights or residency will have a significant impact on billing and reimbursement.
- Notify the administrative unit of residence immediately of any change in parental status or any new parental address, even if it's believed to be within the same district's boundaries.
- If the change in parental status or address results in a change in the district of residence, notify the new district immediately and request records if applicable.
- Under the interagency agreement, the placing agency is required to notify the administrative unit of residence of the placement. Facilities are strongly encouraged to work with their intake staff to require verification of notice of placement from the placing agency prior to accepting the student to avoid delays or discrepancies in payment of excess costs.
- A school district's transportation unit, boundary office, or admissions office can verify whether a specific address falls within the district's boundaries.

Residency issues are difficult and there are often unique circumstances that complicate the matter. If in need of further clarification, contact the Office of Facility Schools.

Resources

ECEA Rules 2.02(1)

<http://www.cde.state.co.us/spedlaw/download/ECEARules-March2013.pdf>

For more information contact:

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