



Illinois State Board of Education

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Guidance Document \$- !\$%

Guidance on PA 95-0844 and PA 95-0938 District Funding Responsibility for Court and Public Agency Residential Placements

*This document is intended to provide non-regulatory guidance on the subject matter listed above.
For specific questions, please contact the person(s) identified in the document.*

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Guidance on PA 95-0844 and PA 95-0938
District Funding Responsibility for Court and Public Agency
Residential Placements

The recent passage of Public Acts [95-0844](#), effective August 15, 2008, and [95-0938](#), effective August 29, 2008, clarifies responsibility for payment of educational services provided to students placed in residential facilities. This guidance is intended to assist districts in determining responsibility for payment under the funding structure established by these Acts and provide preliminary information relative to implementation of the reimbursement requirements established by this legislation.

Each School Code Section which was modified under the Acts will be addressed in turn, highlighting changes made, followed by preliminary implementation guidance in the form of a Q&A.

Residential placement of students not eligible for special education services

Section 10-20.12a Tuition for non-resident pupils
[AMENDED]

As amended, Section 10-20.12a requires that educational services provided to students in residential facilities be provided by the district in which the facility is located and costs paid for by the district of the student's residence. For purposes of the Section, student residence is determined in accordance with subsection (a) of Section 10-20.12b of the School Code.

This service and funding structure applies to all students under the age of 21, who **are not** eligible for special education services under Article 14 of the Code, irrespective of whether they were placed into a residential facility by an Illinois public agency or a court.

(Note: As emphasized further in the Q&A below, the school district of the student's residence will not be responsible for educational costs for the student if the student was unilaterally placed in a residential facility by his or her parent or guardian.)

The amended provisions of Section 10-20.12a apply to all placements in effect on July 1, 2007 and thereafter.

In the event of a dispute regarding the district of residence of a given student, any person or entity may request a written residency decision from the State Superintendent of Education, who shall review written material submitted and issue a written decision as to which district is the district of residence.

Frequently Asked Questions- Article 10

Do the provisions of Section 10-20.12a still apply only to drug or alcohol dependency programs?

No. The language limiting application of these provisions to residential programs “designed to correct alcohol and other drug dependencies” was eliminated in the amendment. These provisions now apply to all residential facility placements for students who are not eligible for special education services under Article 14 of the School Code.

Example: A student, who is not eligible for special education services and is a resident of District A, is placed by a court or agency in a facility designed to treat mental health issues in District B. District B will be responsible for provision of educational services during the student’s placement and District A will be responsible for payments to District B equal to the costs of providing those services. In other words, the serving district must provide appropriate educational services to such non-special education students and the students’ districts of residence must pay for those services.

Do the provisions of Section 10-20.12a apply to students placed unilaterally by their parent/guardian in a residential facility?

No. Unilateral parental placements in residential facilities are not covered by this Section. A local district or facility may provide educational services to students at the parent/guardian’s expense. The school district of residence will not be required to assume financial responsibility for education service costs associated with such a placement.

Will reimbursement be available for school districts of residence who are responsible for educational costs of general education students under Section 10-20.12a?

Yes. If the individual who enrolled the student in the school district of residence lives outside of the serving district where the facility is located, the resident district may claim General State Aid for the student in accordance with Section 18-8.05.

If a Court or state agency has guardianship of the student and he or she is placed in any home for orphans or placed in any organization or association that serves dependent, abandoned or maladjusted children and the student is attending schools maintained by the district, the district where the student is placed and served may claim full tuition reimbursement based on the student’s average daily attendance multiplied by 1.2 of the resident district per capita tuition charge, under Section 18-3 of the School Code. Excess costs not covered by the weighted formula are recouped via a separate excess cost claim.

Example: A juvenile court or State agency assumes guardianship of student and places him or her in a licensed child welfare agency or youth

home that provides residential and community based services. The cost for the education services provided to the student by the district where the organization is located is reimbursed under the provisions of Section 18-3. NOTE: In juvenile delinquency cases, adjudicated minors may be made “wards of the court.” Wardship is a term of art and does not necessarily affect guardianship. Students made wards of the court in this context are NOT eligible for reimbursement under Section 18-3.

Will reimbursement be available for school districts of residence for 2007-2008 school year placements even though attendance information for this school year has been previously submitted?

Yes. These situations will be addressed on an individual basis by ISBE’s Funding & Disbursement division. (Inquiries on this issue may be addressed to Tim Imler, Division Administrator of Funding & Disbursement, at (217) 782-5256.)

Districts will be required to submit a form with the student’s name, a brief description of the State or Court action that warranted the residential placement, the residential facility name and address, the start and end date of student placement, the public district that provided education services and the student’s attendance in the education program for that period of time.

Staff in the Division of Funding and Disbursement Services will review the information to determine whether the days of attendance impacted the district’s best three months average daily attendance used in the 2007-08 General State Aid calculation. Funding and Disbursement Services staff will respond with a determination and any adjustment amount that will be applied.

Can school districts of residence make payments to third parties providing educational services on behalf of school districts in which a residential facility is located?

Yes. Districts in which residential facilities are located can contract with third parties to provide educational services. A school district of residence is not required to make payments to third parties providing educational services on behalf of the school district in which the facility is located, but the resident district may agree to do so. Section 10-20.12a(b) states, in relevant part: *Payments shall be made by the district of the student’s residence and shall be made to the district wherein the facility is located no less than once per month unless otherwise agreed to by the parties.* The resident district must pay for the educational services provided to their students and may make these payments directly to the third party. The fact that a third party is providing educational services on behalf of the district does not relieve the resident district from its obligations under this Section.

Must a student be enrolled or attending school in the district of residence immediately prior to the residential placement in order to trigger resident district responsibility?

No. The residence of the student should be determined in accordance with Section 10-20.12b(a) and responsibility follows regardless of whether student was enrolled and/or attending immediately prior to the residential placement. This applies to students who may have dropped out of school or for students who were previously attending a nonpublic school.

Example: A drug-dependent student runs away from her home in District A during sophomore year and fails to enroll for the beginning of junior year. As a result, the student does not appear on the district's attendance rolls. She is subsequently detained and ordered to a drug dependency rehabilitation facility located in District B by a Juvenile Court. The student's parent maintains residence in District A. District B will be responsible for provision of educational services during the student's placement and District A will be responsible for payments to District B equal to the costs of providing those services.

Is a school district of residence responsible for payment of educational costs for services provided to a student, not eligible for special education services, placed in a residential facility who was previously expelled from the resident district?

Yes. In circumstances consistent with Illinois caselaw, the school district of residence may still be responsible for the cost of educational services provided to a student in a residential facility even when a student is serving an appropriately imposed period of expulsion consistent with Section 2-3.13a of the School Code. See *Carbondale Comm. High Sch. Dist. #165 v. Herrin Comm. Unit Sch. Dist. # 4, et al.*, 708 N.E. 2d 844 (5th Dist., 1999).

In the event that a residency determination dispute is brought to the State Superintendent of Education, will he/she hold a hearing?

No. Interested parties may submit documentation in support of their position to the State Superintendent and he/she may request additional information or materials before issuing a decision, but no hearing will be held.

Residential placement of students eligible for special education services under Article 14 of the School Code

Section 14-1.11 Resident district; parent; legal guardian
[AMENDED]

Section 14-1.11, as amended by P.A. 95-0844, states that in instances where a student has been placed residentially by an Illinois court, the parent's district of residence is the district of residence unless there has been a judicial termination of parental rights.

Section 14-1.11a Resident district; student.
[AMENDED]

Section 14-1.11a, as amended by P.A. 85-0844, clarifies that in instances where an **Illinois public agency** has **legal guardianship** of a student and that agency or any Illinois court has placed the student residentially outside of the school district where the parent lives, the resident school district is the district where the student resides (i.e., the district in which the facility is located).

Section 14-7.03 Special Education Classes for Children from Orphanages, Foster Family Homes, Children's Homes, or in State Housing Units.
[AMENDED]

As amended, Section 14-7.03 states that, for students with disabilities whose district of residence is determined by Section 14-1.11a and who are placed in residential facilities by Illinois public agencies or courts, the district of residence is responsible for the actual costs of the student's special education program and can apply for reimbursement from the State according to the terms of this Section.

In the event of a dispute arises regarding a determination of the district of residence for purposes of Section 14-7.03, an affected district may request a review and written decision from the State Superintendent.

Section 14-7.05 Placement in residential facility; payment of educational costs.
[NEW]

Section 14-7.05 states that for students with disabilities placed by an Illinois public agency or court, the district of residence and financial responsibility for educational services provided will be determined according to the requirements of Article 14 of the School Code. For placements which fall under Section 14-7.02, the district of residence's financial responsibility as well as reimbursement are to be calculated in accordance with the formula established by Section 14-7.02. In addition, this Section articulates that for school districts receiving block grants pursuant to Article 1D of the School Code, financial responsibility for public agency and court placements is limited to actual costs and is to be paid out of the block grant appropriation. (Cont'd.)

Subject to the requirements set out in Section 14-7.05, provisions regarding financial responsibility for public agency and court placements apply for both facilities approved by ISBE in accordance with the requirements of Part 401 [23 IAC 400 et seq.] and those facilities which are not approved in accordance with Part 401.

This Section further provides that Illinois placing agencies or courts are responsible for notifying resident districts prior to or immediately upon placement of a student except in emergency situations. Residential facilities are required to notify the district of residence as soon as practicable after they enroll a new student. School districts of residence retain control of the IEP process, and residential facilities are required to request IEP meetings if additional services are required. All IEP modifications must be done in full compliance with IDEA.

Frequently Asked Questions– Article 14

Is the school district of residence still responsible for educational service costs if it does not receive notice prior to the placement from the placing agency or court?

Yes. The language of Section 14-7.05 specifically states that failure to receive notice from the placing agency or court before the placement does not absolve the district of residence of financial responsibility; however, the district is not responsible “unless and until” it receives written notice of the placement from the placing agency, court or residential facility.

Example: A student, who has been determined eligible for special education services under Article 14 of the School Code, is found delinquent in a Juvenile Court proceeding and placed, by Court Order, in a residential facility designed to rehabilitate juvenile offenders. The Juvenile Court does not notify the school district of residence at the time of placement; however, upon enrollment of the student, the private facility provides written notice of the placement to the school district of residence. The school district of residence is responsible for educational costs associated with the placement beginning at the point where the school district receives that notice.

Is the school district of residence responsible for educational service costs associated with an agency or court placement in a residential facility that has not been approved under 23 IAC 401, et seq.?

Not always. In order for responsibility and reimbursement to attach, a non-approved residential facility must be able to demonstrate that it meets the minimum standards articulated in Section 14-7.05:

A residential facility providing educational services within the facility, but not approved by the State Board of Education, is required to demonstrate proof to the

State Board of (i) appropriate certification of teachers for the student population, (ii) age-appropriate curriculum, (iii) enrollment and attendance data, and (iv) the ability to implement the child's IEP. [105 ILCS 5/14-7.05].

Additional guidance will be forthcoming from the ISBE Special Education Services Division indicating the required documentation and a contact for submission of this required information.

If a DCFS ward, who is eligible for special education services, is placed in a residential facility by DCFS and DCFS has temporary custody but there has not been a termination of parental rights, which district is the responsible district? Under what Section of the School Code should that district apply for reimbursement?

Under Section 14-1.11a(5), the district of residence is the district in which the student resides. The school district of residence may request reimbursement under Section 14-7.03.

Example: DCFS has legal guardianship of a student who has been identified as eligible for special education services under Article 14 of the School Code. The student's parent lives in District A. Based on the student's mental health needs, DCFS places the student in a private residential facility in District B. Per Section 14-1.11a(5), District B is the student's district of residence and will be responsible for educational service costs. District B may then apply for reimbursement under Section 14-7.03 of the School Code.

If a student, who is eligible for special education services, is placed in a residential facility by an Illinois juvenile court order, is the district of residence determined under Section 14-1.11 or 14-1.11a? Under what Section of the School Code should the district of residence apply for reimbursement?

The district of residence may be determined under either 14-1.11 or 14-1.11a depending on the status of the parental rights of the parents/guardian. If the parents have not been subject to a termination of parental rights order then the residency of the student is determined by Section 14-1.11 and the district of residence is the district in which the parents reside. That district is responsible for educational service costs and can apply for reimbursement under the appropriate Sections of the School Code.

If the student's parents have been subject to a termination of parental rights order, and the student is now a ward of an Illinois public agency, residency is determined under Section 14-1.11a and the district of residence is the district in which the student resides. That district is responsible for educational service costs and can apply for reimbursement under Section 14-7.03.

Who is responsible for the payment of educational costs provided to a student, who is eligible for special education services, and has been placed by an Illinois public agency or court if her parents, who have custody of the student, move to a new school district and enroll the student?

Under Section 14-1.11, the school district into which the parents have moved becomes the district of residence. That school district should enroll the student and assume financial responsibility from the date of enrollment, which shall serve as that district's actual date of notice of the student's placement.

If a student with disabilities is placed in an approved facility through an Individual Care Grant, is the district of residence responsible for payment of educational services?

Yes. A placement made through an Individual Care Grant as authorized by Section 7.1 of the Mental Health and Developmental Disabilities Administrative Act [20 ILCS 1705/1 et seq.] is a placement made and funded by an Illinois public agency; therefore, the student's district of residence, in general the district in which the parent resides unless there has been a termination of parental rights, will be responsible for payment of the educational services provided to the student. Given existing law and rules which administer Individual Care Grants, ISBE does not consider a placement made with such a grant to be a unilateral parental placement.

If a student has been placed by an Illinois Court or agency in a residential facility outside of her district of residence and, consistent with the student's educational needs, the student is sent to a public school program for services, is the student's district of residence responsible for the costs of educational services?

Yes. Under Section 14-7.05, the district of residence determined in accordance with Article 14 provisions is responsible for the costs of educating the student. The district of residence in this scenario will generally be the district where the parent resides, unless there has been a termination of parental rights. That district can claim the student for General State Aid as well as Section 14-7.02b. In such instances, costs billed by the district providing services must be calculated in accordance with Part 130 [23 IAC 130, et seq.].

If an Illinois Juvenile Court has issued an order indicating a student in delinquency proceedings is a ward of the court and placed in a residential facility, but the student's parents have not been subject to a termination of parental rights, can the district of residence claim reimbursement under Section 14-7.03?

No. If the student's parents' rights have not been judicially terminated, then the student's residency must be determined according to Section 14-1.11 and the school district in which the parent's reside is the district of residence. That district cannot apply for reimbursement under Section 14-7.03, but it may apply for reimbursement of education service costs under the other appropriate Sections of the School Code. (Cont'd.)

Examples of the types of language in court orders which are not acceptable for Section 14-7.03 funding include:

- “Director of Court Services is named guardian with power to place the minor. Minor and family to cooperate with residential placement. Parents to reimburse DCS for . . .”
- “Custody and guardianship of minor given to (Name), Director of Probation Department. The minor’s parents to pay the custodian the reasonable sum for all necessary medical, dental and other necessary expenses.”
- “(Name) is hereby appointed temporary Guardian of the above mentioned minor. The county shall also pay for medical care not covered by parents.”
- “(Name), Supervisor of County Probations, is made Guardian of the Minor. The parents shall ensure that . . .”