

CUSTODY, RESIDENCY & HOMELESSNESS:
 WHO'S THE PARENT,
 WHERE DOES THE STUDENT LIVE &
 WHERE CAN THE STUDENT GO TO SCHOOL?

Presented by: Michelle H. Basi Date: March 28, 2019 DIFFERENT BY DESIGN

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Goals

- Understand residency requirements
- Recognize exceptions
- Understand obligations to homeless students
- Know who has parental rights






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Where Does the Student Live?

General Rule – Mo. Rev. Stat. § 167.020

- Proof of Residency; or
- Request for waiver; or
- Other exception under Missouri law; or
- Homeless status under state and federal law






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Where Does the Student Live?

General Rule – Mo. Rev. Stat. § 167.020

Except as otherwise provided in section 167.151, the term "**residency**" shall mean that a person both physically resides within a school district and is domiciled within that district or, in the case of a private school student suspected of having a disability under the Individuals With Disabilities Education Act, 20 U.S.C. Section 1412, et seq., that the student attends private school within that district.



 

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Where Does the Student Live?

General Rule – Mo. Rev. Stat. § 167.020

- **Residency:** Means that a person both physically resides within a school district and is domiciled within that district
- **Domicile:** Domicile of a minor child shall be the domicile of the parent, military guardian, or court-appointed legal guardian
- **Domicile:** "that place where a person has his true, fixed and permanent home and principal establishment to which, whenever he is absent, he has the intention of returning."
Fowler v. Clayton Sch. Dist., 528 S.W.2d 955, 957



 

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Where Does the Student Live?

General Rule

- **Remember:** Students must be physically present (living) in the district before most exceptions to domicile are even an issue
(Exceptions: homeless students, foster children)



 

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Where Does the Student Live?

BUT....Lots of Exceptions!



- Homeless youth or child
- Foster care student
- Orphan children, children with only one parent living, and children whose parents do not contribute to support where student has a permanent or temporary home
- Resident of unaccredited school district

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Where Does the Student Live?



- What if student does not live with a parent or guardian?
 - Exception?
 - Waiver of Proof of Residency?
 - Power of attorney not required
- FERPA – in the absence of a parent or guardian, person acting as parent or guardian has rights
- *Horton v. Marshall Public Schools*, 769 F.2d 1323 (8th Cir. 1985)

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Where Does the Student Live?



- **Waiver of Proof of Residency (Mo. Rev. Stat. 167.020.3)**
 - > Can be granted for hardship or good cause
 - > Athletic ability not a valid basis for hardship or good cause
 - > Technically requires a board hearing
 - > Board hearing sometimes not conducted when the hardship or good cause is readily apparent – but **MUST** be conducted before denial
 - > Policy JECA; Policy 2230

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Where Does the Student Live?

- **Waiver of Proof of Residency – Procedure**
 - Immediate admission upon completing the request
 - May be excluded if student presents immediate danger (requires hearing within five working days of request to register)
 - Must act on waiver within 45 days or request will be granted
 - Denial may be appealed to Circuit Court in the county where the school district is located






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Where Does the Student Live?

Special Residency Rule for Military Families



Military Rule (§ 167.020 RSMo.):
 For instances in which the family of a student living in Missouri co-locates to live with other family members or live in a military family support community because one or both of the child's parents are stationed or deployed out of state or deployed within Missouri under Title 32 or Title 10 active duty orders, the student may attend the school district in which the family member's residence or family support community is located. If the active duty orders expire during the school year, the student may finish the school year in that district.

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Where Does the Student Live?



- **Residency Affidavits**
 - Family does not have traditional proof of residency documentation, i.e., a lease, utility bills, etc.
 - Still meet traditional residency or waiver requirements, but use affidavit as documentation
- **Consequences for falsification**
 - Class A misdemeanor
 - Other criminal charges, such as stealing and/or criminal fraud
 - Civil action to recover tuition
 - Other civil actions, such as civil fraud

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Is the Student Homeless?



- **Law** – Mo. Rev. Stat. § 167.020.1; McKinney-Vento Homeless Education Assistance Act, 42 U.S.C. §§ 11431 *et seq.*
- **Definition** – the term “homeless child” or “homeless youth” means a person less than 21 years of age who lacks a fixed, regular and adequate nighttime residence, including a child or youth who:

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Is the Student Homeless?



- Is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in motels, hotels, or camping grounds due to lack of alternative adequate accommodations; is living in emergency or transitional shelters; or is abandoned in hospitals
- Has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings

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Is the Student Homeless?



- Is living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or
- Is a migratory child or youth who qualifies as homeless because the child or youth is living in the circumstances described above.

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Obligations to Homeless Students



- **Schools are required to:**
 - Appoint homeless coordinator
 - Review policies to remove all barriers to enrollment of homeless students
 - Enroll student immediately when student presents as homeless
 - Coordinator must assist in obtaining educational, immunization, medical and other records
 - Enroll pending receipt of records
 - If immunization records cannot be obtained, student must begin required immunizations and demonstrate satisfactory progress within 90 days

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Obligations to Homeless Students



- **Schools are required to:**
 - Serve student in school of student's best interest, which is usually the school of origin or school requested by parent or guardian
 - Provide transportation as necessary
 - If school of origin and school of residence are in different districts, LEAs must agree on how to cover costs of transportation
 - If cannot agree, LEAs must share cost of transportation equally

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But Who Is the Parent?!?



- Parent by birth/adoption, court appointed legal guardian
- Non-custodial parents
 - Access to records, absent court order to contrary
 - Parenting Plan – we follow but are NOT responsible for enforcing
 - Either parent may delegate access
 - Step-parents? Grandma? Boyfriend/Girlfriend?
 - No veto by other parent
 - Consent & signature issues

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But Who Is the Parent?!?



- Individual acting as Parent in the absence of a parent
 - FERPA, IDEA, Missouri school enrollment law (waiver!)
 - Court order is **NOT** required
 - Power of attorney is **NOT** required

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But Who Is the Parent?!?



- Other Documents?
 - Relative Caregiver Affidavit (§ 431.058 RSMo.)
 - Limited Guardianship (§ 475.060.1(11) RSMo.)

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Summary

- Know the law
- Consider the exceptions
- Err on side of educating students who are present in the district
- Be proactive in identifying homeless students
- Work with parents/guardians/those acting as parents/guardians
- Seek guidance when unsure

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QUESTIONS??

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