

760513.1

SCHOOLS AND SCHOOL DISTRICTS: Residence of students

WORDS AND PHRASES: "Residence"

A child who resides in the home of a relative for the purpose of securing a suitable home is, for school purposes, a resident of the school district in which the relative resides. If, on the other hand, the child resides in the home of a relative to receive educational benefits of the school district, the child is not, for school purposes, a resident of the school district in which the relative resides.

Opinion No. 5004

May 13, 1976.

Honorable H. Lynn Jondahl
State Representative
The State Capitol
Lansing, Michigan 48901

You have requested my opinion on the following question:

"For purpose of school enrollment, what is the definition of residence?"

The residence of students, for public school enrollment purposes, is determined pursuant to the provisions of the School Code of 1955, 1955 PA 269; MCLA 340.1 *et seq*; MSA 15.3001 *et seq*. The School Code of 1955, §§ 356 and 357, *supra* allows all children, at least five years of age, to enroll in the schools of the school district in which they are residents.

The definition of residence of school children was set out by the Michigan Supreme Court in the controlling case of *School District No. 1, Fractional, of the Township of Mancelona v School District No. 1 of Township of Custer*, 236 Mich 677; 211 NW60 (1926); hereinafter referred to as the *School District* case. It was stated therein that residence for public school enrollment purposes is not the same as residence for voting purposes. In discussing this fact the court stated:

"... Such rule does not usually require that there shall be a legal domicile, but it is sufficient if the child and its parent, or the person in *loco parentis*, are actually resident in the district, with apparently no present purpose of removal.' 24 R.C.L. p. 624." *School District* case, *supra*, at 680; 211NW at 61

For a definition of "resident" the court restated the following test:

"The rule as to what constitutes residence entitling children to the privileges of public schools is well stated in the note to *Commonwealth v School Directors of Upper Swatara Township*, 26 L.R.A. 581:

'So far as a rule can be deduced from the cases upon this subject, it seems to be that a child is entitled to the benefit of the public schools in the district in which it lives if it has gone there in good faith for the purpose of acquiring a home and not for the purpose of taking advantage of school privileges. But that it will not be

permitted to go into a district chiefly for the purpose of getting school advantages.’”

School District case, *supra*, at 682; 211 NW at 62.

Where a child is living in a home, other than that of his parent or legal guardian, the School Code of 1955, § 358, *supra*,* provides the following:

“Children placed under the order or direction of courts or child-placing agencies in licensed homes, and children whose parents or legal guardians are unable to provide a home for them and who are placed in licensed homes or in homes of relatives in the school district for the purpose of securing a suitable home for said children and not for an educational purpose, shall be considered residents for educational purposes of the school district where the homes in which they are living are located, and as such shall be admitted to the school in such district, except as provided in section 945 of this act.” (emphasis added) MCLA 340.358; MSA 15.3358.

The Michigan Court of Appeals, in *Shapiro v Ann Arbor School District*, 14 Mich App 738; 165 NW2d 919 (1968), held that a child who did not live with her parents, even though they were able to provide her with a suitable home, but instead lived in the Ann Arbor School District for educational purposes only, was not a resident of the Ann Arbor School District. Thus, the child was not entitled to tuition-free enrollment in that school district.

Within this framework of the definition of residence for public school purposes in Michigan case law, I will address the three specific examples you presented as illustrations of your question.

In your first example, the child is living with his father in a different school district from the one in which the mother is living. Even though the mother has legal custody of the child, this arrangement was informally agreed upon between the parents to provide the child with a better home. This situation is controlled by the rules of the *School District* case, *supra*; the child is living with his parent and is a resident in the school district in which he is actually living.

In the second example, the child is living with family friends near a state university in a school district other than the school district in which the child's parents live. There is no indication that the parents are unable to provide a suitable home for the child. Rather, the parents prefer that the child be able to take advantage of a unique ice skating program available at the university. This situation is clearly controlled by *Shapiro v Ann Arbor School District*, *supra*, and this child is not an educational resident of the district in which it is living with family friends, but the child is a resident of the school district in which the child's parents live.

In your final example, the father, living in Nebraska, has legal custody, but is unable to properly provide for the child. For this reason, the child lives with his grandparents in a Michigan school district. This case comes

* The School Code of 1955, § 298c, *supra*, directs that, notwithstanding section 358, the residency of a handicapped person in a special education program is determined by rules promulgated by the state board of education.

within the scope of the School Code of 1955, § 358, *supra*, and the child is, for public school enrollment purposes, an educational resident of the Michigan school district in which he is living.

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7605/4.2

TEACHERS: Tenure

WORDS AND PHRASES: "Controlling board"; "Teacher"

A teacher who has acquired tenure in another state and subsequently comes to Michigan to teach must serve a 2 year probationary period before acquiring tenure in a Michigan public school district.

Opinion No. 4976

May 14, 1976.

Honorable Philip Mastin
State Representative
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You have requested my opinion on the following question:

"If a teacher has been passed under tenure in a state other than Michigan, and then comes to Michigan to teach, must he then serve the two year probation period for tenure in Michigan?"

Teacher tenure in Michigan is controlled by the provisions of 1937 PA (Ex Sess) 4; MCLA 38:71 *et seq*; MSA 15.1971 *et seq*, the teachers' tenure act.

This act is specific that all teachers must serve a probationary period as seen in the following section:

"All teachers during the first [1st] two [2] school years of employment shall be deemed to be in a period of probation: . . ." MCLA 38.81; MSA 15.1981

The purpose of the tenure act is to protect teachers from any capricious and arbitrary employment policies of local school boards after the teacher has satisfied the controlling board of his or her competence during the probationary period. *Munro v Elk Rapids Schools*, 385 Mich 618; 189 NW2d 224 (1971).¹

The teachers' tenure act grants continuing tenure "[a]fter the satisfactory completion of the probationary period." MCLA 38.91; MSA 15.1991.

In the teachers' tenure act, the legislature has provided the following:

"If a *teacher on continuing tenure* is employed by *another controlling board*, he shall not be subject to another probationary period of more than 1 year beginning with the date of employment, and may at the

¹ On rehearing adopting the minority opinion of 383 Mich 661; 178 NW2d 450 (1970).