State of Rhode Island and Providence Plantations
**DEPARTMENT OF EDUCATION**
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Deborah A. Gist
Commissioner

August 8, 2014

**To:** **Superintendents of Schools and School Principals**

**From:** **David V. Abbott, Deputy Commissioner and General Counsel**

**Subject:** **School Residency Determinations**

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As the beginning of the school year traditionally brings about many questions on the issue of school residency, I am writing to provide a brief reminder of the process by which residency disputes are to be resolved.

Rhode Island General Law 16-64-6 directs that disputes concerning the residency of students shall be resolved by the Commissioner of Education. In order for the statutory mechanism for resolving residency disputes to operate, a school district must notify the parent(s) or guardian of a student of (1) the reason(s) for the district's refusal to enroll the child in school, and (2) the right of the parent(s) or guardian to appeal the district's decision to the Commissioner. It is critical for this notice to be given so that gaps in school attendance can be avoided. Enclosed is a written notice which we request be used in all determinations that a student is not a resident of your district, along with a *Spanish translation* for your use as needed. By use of the written notice, parents can quickly determine whether they agree with the reasons for the residency determination and, if not, seek review of this decision at the state level. In this way, students whose school residency is in dispute can receive a timely hearing and not be subjected to prolonged periods out of school.

We would appreciate your cooperation in making sure that appropriate staff in your district have copies of this form and that they use it whenever a determination is made of a student's non-residency. Please keep in mind that students already enrolled and in attendance cannot be disenrolled from school upon the filing of an appeal by a parent or guardian and while a hearing is pending before the Commissioner's office, because of the state's compulsory attendance law.

***Legal Guardianship:*** Please note that our statute R.I.G.L. 16-64-1 provides that a child can establish residency for school purposes even if he lives separate and apart from his parent and even if he lives with a relative or a person who is not his legal guardian. If a child lives with a person who has not been appointed as his legal guardian but who is acting in loco parentis, and the purpose for these living arrangements is for some *substantial reason other than to attend a district's schools*, the student is entitled to enroll. A district cannot condition school enrollment on the appointment of a legal guardian. The guardianship would not necessarily change a child's residency unless the guardian has been appointed for a substantial reason other than to change the child's residency for school purposes. In the same respect, a district may not deny enrollment on the basis of a Family Court order of custody or other

decree effecting custodial and/or visitation status alone. Though such order or decree may be relevant, a district should consider other indicia of residency before making a decision on residency.

***Completion of semester:*** Under R.I.G.L. 16-64-8, if a student changes residence prior to the end of the semester, the student shall be allowed to complete the semester in his or her original school district. If the student is a senior or has completed the junior year and is to enter the senior year, the student shall be allowed to complete the senior year in his or her original city or town of residence.

***Homeless Students – Residency for School Purposes:*** Homeless students receive the protections of the federal McKinney-Vento Homeless Assistance Act. This means that students defined as homeless under the Homeless Act may request to continue their education in the school district of origin, while under the protection of the Act. If a homeless student elects to remain in his or her school district of origin, transportation responsibilities shall be divided if crossing LEA lines are necessary and shall remain with the district(s) housing fixed housing is obtained. Please keep in mind that while students are awaiting placement in a foster home, they are included in the definition of homeless students.

***Children Placed in Foster Care*:** Under R.I.G.L. 16-64-1.1 children placed in foster care are entitled to attend school in the city or town in which they are placed. Children placed in foster care also receive protections under the Fostering Connections to Success and Increasing Adoptions Act of 2008. This federal law addresses the needs of these children for educational stability and continuity. Under this law, a foster child is entitled to remain in his/her original school, unless it is not in the child's best interests. If remaining in the school of origin is determined by DCYF not to be in the best interests of the child, then the child must be allowed to enroll in the district where he/she resides with the foster family. A child's "best interests" will be determined by DCYF after all relevant information about the child has been reviewed.

I hope that this brief summary of the residency rules and procedures will be helpful both now and throughout the school year. Any specific questions should be referred to your district's legal counsel. If we can provide you with any additional information, please contact the Chief Legal Counsel Office at 222-8979 or email Vilma.diorio@ride.ri.gov

# NOTICE OF NON-RESIDENCY DETERMINATION

Dear_____:

This office has determined that_____is not a resident of the town/city of _____for school purposes. The reason for non-resident status is:

_____ The student does not physically reside in the district.
_____ The student lives in the district, but not with a parent, and the reason for living apart from the parent(s) is not for a substantial reason other than to attend this district's school.
_____ The student has not shown that he/she is an emancipated minor.
_____ Exceptions to school residency under Rhode Island General Law 16-64-8 do not apply.*
_____ A legal guardian was appointed for no substantial reason other than to change his/her school residence.

## RIGHT TO APPEAL

- If you disagree with this determination of school residency, you may appeal this decision directly to the Commissioner of Elementary and Secondary Education. Written appeals, signed by a parent or guardian of the student, may be submitted to:

Commissioner Deborah A. Gist
Rhode Island Department of
Elementary and Secondary Education
255 Westminster Street
Providence, RI 02903
Fax 401-222-6178

## RIGHTS OF STUDENTS ALREADY ENROLLED

- If the student is enrolled and attending school at the time of the district's determination of non-residency, and the parent or guardian disagrees with the district's determination of school residency, the student should remain enrolled until an expedited hearing can be held at the Department of Elementary and Secondary Education.

_____ or _____
Principal Attendance Officer

*R.I.G.L. 16-64-8 permits a student who changes his or her residency during the course of a semester to complete the semester in his/her original school district. This law also permits a student to complete his or her senior year in his/her original school district if he/she changes residence after completion of his/her junior year.

## AVISO DE LA DETERMINACION DE NO-RESIDENCIA

Estimado _____:

Esta oficina ha determinado que _____ no es residente del pueblo/ciudad de _____ para fines escolares. La razón por el estado de no-residente es:

___ El estudiante no reside físicamente en el distrito.
___ El estudiante vive en el distrito, pero no con un padre, y la razón de vivir aparte del padre(s) no es por un motivo substancial salvo de asistir a la escuela de este distrito.
___ El estudiante no ha demostrado que él/ella es un menor emancipado.
___ Excepciones a residencia escolar debajo La Ley General de Rhode Island (R.I.G.L.) 16-64-8 no se aplican. *
___ Un guardián legal fue nombrado por no motivo substancial salvo de cambiar su residencia escolar.

## DERECHO A APELAR

- Si usted no está de acuerdo con esta determinación de residencia escolar, puede apelar esta decisión directamente al Comisionado de Educación Primaria y Secundaria, 255 Westminster Street, Providence, R.I. 02903. Se puede someter apelaciones escritas, firmadas por un padre o por un guardián del estudiante, a:

Commissioner Deborah A. Gist
RI Department of Elementary & Secondary Education
255 Westminster Street
Providence RI 02903
Fax # 401-222-6178

## DERECHOS DE ESTUDIANTES YA INSCRITOS

- Si el estudiante está inscrito y asistiendo a la escuela al tiempo de la determinación del distrito de no-residencia, y el padre o guardián no está de acuerdo con la determinación del distrito de no-residencia, el estudiante debe seguir inscrito hasta que se pueda tener una audiencia rápida en el Departamento de Educación Primaria y Secundaria.

_____ _____
Director de la Escuela u Oficial de Asistencia

* R.I.G.L. 16-64-8 permite a un estudiante que cambie su residencia durante el curso de un semestre para completar el semestre en su distrito escolar original. Esta ley también permite a un estudiante terminar su último año (4$^{to}$) en su distrito escolar original si cambia residencia después de terminar el 3$^{er}$ año.