

Title 16 : Education

Chapter 025 : Attendance And Discipline

Subchapter 001 : General Provisions

(Cite as: 16 V.S.A. § 1075)

- **§ 1075. Legal residence defined; responsibility and payment of education of student**

(a) For the purpose of this title, except as otherwise set forth, the legal residence or residence of a student shall be as follows:

(1) In the case of a minor, legal residence is where his or her parents reside, except that:

(A) if the parents live apart, legal residence is where either parent resides, but if a parent with sole custody lives outside the State of Vermont, the student does not have a legal residence in Vermont;

(B) if the minor is in the custody of a legal guardian appointed by a Vermont court or a court of competent jurisdiction in another state, territory, or country, legal residence is where the guardian resides.

(2) In the case of a student who has reached the age of majority, legal residence is where the student resides.

(3) For the purposes of this title, “resident” of the State and of a school district means a natural person who is domiciled in the school district and who, if temporarily absent, demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act or acts consistent with that intent. The term “temporarily absent” includes those special cases listed in 17 V.S.A. § 2122(a). The term “residence” is synonymous with the term “domicile.” A married person may have a domicile independent of the domicile of his or her spouse. If a person removes to another town with the intention of remaining there indefinitely, that person shall be considered to have lost residence in the town in which the person originally resided even though the person intends to return at some future time. A person may have only one residence at a given time.

(b) The Secretary shall determine the legal residence of all State-placed students pursuant to the provisions of this section. In all other cases, the student’s legal residence shall be determined by the school board of the district in which the student is seeking enrollment or, if the student is seeking payment of tuition, the school board from which the student is seeking tuition payment. If a student is

denied enrollment at any stage, the student and his or her parent or guardian shall be notified in writing, within 24 hours, of the provisions of this section. If the student is not in attendance as a result of a preliminary decision by school officials and a decision from the school board will not be available by the end of the second school day after the request for enrollment is made, the Secretary may issue a temporary order requiring enrollment. Any interested person or taxpayer who is dissatisfied with the decision of the school board as to the student's legal residence may appeal to the Secretary, who shall determine the student's legal residence, and the decision of the Secretary shall be final. Pending appeal under this subsection, the Secretary shall issue a temporary order requiring enrollment.

(c) State-placed students.

(1) A State-placed student in the legal custody of the Commissioner for Children and Families, other than one placed in a 24-hour residential facility and except as otherwise provided in this subsection, shall be educated by the student's school of origin, unless the student's education team determines that it is not in the student's best interests to attend the school of origin. The student's education team shall include, as applicable, the student, the student's parents and foster parents, the student's guardian ad litem and educational surrogate parent, representatives of both the school of origin and potential new school, and a representative of the Family Services Division of the Department for Children and Families. In the case of a dispute about whether it is in the student's best interests to attend the school of origin, the Commissioner for Children and Families shall make the final decision. As used in this section, "school of origin" means the school in which the child was enrolled at the time of placement into custody of the Commissioner for Children and Families, or in the case of a student already in the custody of the Commissioner for Children and Families, the school the student most recently attended.

(2) If a student is a State-placed student pursuant to subdivision 11(a)(28)(D)(i)(I) of this title, then the Department for Children and Families shall be responsible for the student's transportation to and from school, unless the receiving district chooses to provide transportation.

(3) A State-placed student not in the legal custody of the Commissioner for Children and Families, other than one placed in a 24-hour residential facility and except as otherwise provided in this subsection, shall be educated by the school district in which the student is living, unless an alternative plan or facility for the education of the student is agreed upon by the Secretary. In the case of dispute as to where a State-placed student is living, the Secretary shall conduct a hearing to determine which school district is responsible for educating the student. The Secretary's decision shall be final.

(4) A student who is in temporary legal custody pursuant to 33 V.S.A. § 5308(b)(3) or (4) and is a State-placed student pursuant to subdivision

11(a)(28)(D)(i)(II) of this title shall be enrolled, at the temporary legal custodian's discretion, in the district in which the student's parents reside, the district in which either parent resides if the parents live in different districts, the district in which the student's legal guardian resides, or the district in which the temporary legal custodian resides. If the student enrolls in the district in which the temporary legal custodian resides, the district shall provide transportation in the same manner and to the same extent it is provided to other students in the district. In all other cases, the temporary legal custodian is responsible for the student's transportation to and from school, unless the receiving district chooses to provide transportation.

(5) If a student who had been a State-placed student pursuant to subdivision 11(a)(28) of this title is returned to live in the district in which one or more of the student's parents or legal guardians reside, then, at the request of the student's parent or legal guardian, the Secretary may order the student to continue his or her enrollment for the remainder of the academic year in the district in which the student resided prior to returning to the parent's or guardian's district, and the student will continue to be funded as a State-placed student. Unless the receiving district chooses to provide transportation:

(A) If the student remains in the legal custody of the Commissioner for Children and Families, then the Department for Children and Families shall assume responsibility for the student's transportation to and from school.

(B) In all other instances under this subdivision (4), the parent or legal guardian is responsible for the student's transportation.

(d) [Repealed.]

(e) For the purposes of this title, the legal residence or residence of a child of homeless parents is the child's school of origin, as defined in subdivision (c)(1) of this section, unless the parents and another school district agree that the child's attendance in school in that school district will be in the best interests of the child. A "child of homeless parents" means a child whose parents:

(1) lack a fixed, regular, and adequate residence; or

(2) have a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations such as public assistance hotels, emergency shelters, battered women's shelters, and transitional housing facilities, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings.

(f) For the purposes of this title, the legal residence of an alien, immigrant, or refugee child shall be determined in the same manner as in subsection (e) of this section, unless the child's parents have established a residence in the State.

(g) [Repealed.]

(h) For the purposes of this title, the legal residence or residence of an independent student is where the independent student resides. “Independent student” as used in this subsection means a child between the ages of 14 and 18 years who by the acts and expressions of the child and his or her parents or legal guardian has demonstrated that he or she is living separate and apart from his or her parents or legal guardian, is independent of the authority of his or her parents or legal guardian, and is not economically dependent upon his or her parents or legal guardian. For the purposes of this subsection, the term “independent student” shall also include “emancipated minor” as that term is defined in 12 V.S.A. § 7151(a).

(i) The Commissioner for Children and Families shall continue to provide social services and financial support in accordance with section 2950 of this title on behalf of individuals under his or her care and custody while in a residential placement, until they reach their 19th birthday.

(j) A claim or statement of fact bearing on residency shall be subject to 13 V.S.A. § 3016.

(k) [Repealed.] (Amended 1967, No. 147, § 25; 1973, No. 152 (Adj. Sess.), § 8, eff. April 14, 1974; 1975, No. 48, § 10, eff. April 15, 1975; 1977, No. 194 (Adj. Sess.), § 1; 1979, No. 6, § 1, eff. March 2, 1979; 1981, No. 153 (Adj. Sess.), § 2; 1985, No. 51; 1989, No. 187 (Adj. Sess.), § 5; 1989, No. 233 (Adj. Sess.), § 1; 1991, No. 21, §§ 2, 3; 1995, No. 145 (Adj. Sess.), § 3; 1995, No. 157 (Adj. Sess.), §§ 5, 30(a)(2), 30(c), and § 29 (eff. July 1, 1997); 1995, No. 174 (Adj. Sess.), § 3; 2003, No. 36, § 8; 2009, No. 44, § 15, eff. May 21, 2009; 2011, No. 58, § 10, eff. May 31, 2011; 2013, No. 92 (Adj. Sess.), § 117, eff. Feb. 14, 2014; 2017, No. 49, § 28; 2019, No. 131 (Adj. Sess.), § 73.)