

RESIDENT STUDENTS (MSMA)



Maine School Management Association
NEWSLETTER



RESIDENT STUDENTS

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SCHOOL LAW

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DUE PROCESS - ADMISSION TO SCHOOL

In two recent cases, school districts have been challenged in court for refusing to allow students to remain in school after their parents or legal guardians have moved out of the district. These cases are summarized as follows:

In Takeall v. Ambach, 609 F.Supp 81 (D.C. N.Y. 1985), a student by the name of Allan Takeall sued the White Plains, New York School Board. The suit charged that the Board violated both state law and his constitutional due process rights by denying him admission to school.

Allan lives in White Plains with an adult who is not a relative. No parent or legal guardian lives in the district. He was verbally notified in the fall of 1983 that he could not attend the White Plains schools because he had no parent or guardian living there and he was not emancipated. In January of 1984, the White Plains school board refused a request from Allan's attorney for a written decision on his eligibility for admission, a written statement of reasons and notice of his right to a hearing by the Commissioner of Education.

The federal district court decided in Allan's favor. They reached the conclusion that his due process rights had been violated. He was entitled to written notice of and reasons for the board's decision not to admit him. The board was also responsible for notifying Allan of his right to appeal their decision under state law.

The other case, Horton vs. Marshall Public Schools, 769 F.2d 1323 (8th Cir. 1985), two minor children were left by their mother with their aunt and uncle, neither of whom was their legal guardian. The mother moved from Marshall, Arkansas to another state. The school had a policy that did not permit minors to attend unless a parent or legal guardian lived in the district. As a result, the school officials told the students they could no longer attend the Marshall schools. The students filed suit in federal court charging that the school district had violated their constitutional rights to due process and equal protection.

The court ruled the policy unconstitutional on the grounds that the policy creates an "irrebuttable presumption" that a minor who does not live in the same district as his/her parent or legal guardian is not domiciled there.



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The court in Horton also ruled that the Marshall School District policy violates the equal protection clause. To successfully defend an equal protection challenge, the school board would have to show that the policy "rationally" furthers a legitimate state purpose. The court determined that the school district failed to substantiate its claim that the policy prevented fluctuations in enrollment which would be harmful to the system, rejected the argument that the policy protected financial resources needed to educate children of taxpayers and that the school district's argument that the policy assured that a person (i.e., parent or guardian) would be available with whom the district could effectively deal in matters of discipline, education and medical needs. The court acknowledged the need for such a person, but determined that the requirement that this person be a parent or guardian is overly restrictive.

MAINE LAW speaks to the issue of residency for the purpose of attending school. Title 20-A Sections 5202-5205 (pages 336-341 - State of Maine Laws Relating to Public Schools, 1984) define residency. Section 5202. Residence, reads as follows:

1. Definitions. For the purposes of this chapter, "parent" means the parent or guardian with legal custody.

2. General rule. Persons shall be considered residents of the school administrative unit where their parents reside. A federal installation shall be considered part of the school administrative unit in which it is located.

Sections 5203 and 5204 deal with rights of students to attend school in another unit under conditions where, for example, they live in remote locations, or where there is no school, or where there are insufficient course offerings to meet their needs.

Section 5205 deals with school attendance privileges for state wards, students placed by state agencies, temporary residents and residents living at light, fog warning or life stations. Two subsections of 5205 dealing with students attending schools in units other than those where their parent or legal guardian resides are particularly significant in light of the Horton and Takeall decisions. They read as follows:

2. Other students not living at home. A student other than a state ward, residing with another person who is not the student's parent, shall be considered a resident of the school administrative unit where the student resides if the superintendent of the unit determines that it is in the best interest of the student because of the following:

A. It is undesirable and impractical for that student to reside with the student's parent, or that other extenuating circumstances exist which justify residence in the unit; and 1981, c. 693, §5, 8(new) Eff. 7/1/83.

B. That person is residing in the school administrative unit for other than just education purposes. 1981, c. 693, §5, 8(new) Eff. 7/1/83.

The commissioner shall review the superintendent's findings under paragraph B, on the request of that student's parent. The commissioner's decision shall be final and binding. 1981, c. 693, §5, 8(new) Eff. 7/1/83.



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6. Transfer students. The following provisions apply to transfers of students from one school administrative unit to another.

A. Two superintendents may approve the transfer of a student from one school administrative unit to another if:

(1) They find that a transfer is in the student's best interest; and

(2) The student's parent approves.

The superintendents shall notify the commissioner of any transfer approved under this paragraph. 1981, c. 693, §§5, 8(new) Eff. 7/1/83.

B. On the request of the parent of a student requesting transfer under paragraph A, the commissioner shall review the transfer. The commissioner's decision shall be final and binding. 1981, c. 693, §§5, 8(new) Eff. 7/1/83.

C. The superintendents shall annually review any transfer under this subsection. 1981, c. 693, §§5, 8(new) Eff. 7/1/83.

D. For purposes of the state school subsidy, a student transferred under this subsection shall be considered a resident of the school administrative unit to which transferred. For purposes of local leeway under section 15511, subsection 3, a student transferred under this subsection shall be considered a resident of the largest municipality in the school administrative unit to which transferred. 1981, c. 693, §§5, 8(new) Eff. 7/1/83.

E. A school administrative unit may not charge tuition for a transfer approved under this subsection. 1981, c. 693, §§5, 8(new) Eff. 7/1/83.
1981, c. 693, §§5, 8(new) Eff. 7/1/83.

1981, c. 693, §§5, 8 (new) Eff 7-1-83.

These two federal court decisions suggest that Maine school boards cannot adopt policies which automatically exclude a student whose parent or legal guardian does not live in the district. They also suggest that due process be accorded to all who apply for admission under the law, including written notification of the decision to admit or not to admit them, and notification of their right to appeal the decision to the Commissioner of Education.

De Facto Student Status

Another case related to a student's right to attend school which is of interest is Burdick v. Independent School District No. 52, 701 p.2d 48 (Okla. 1985). In this case a family had purchased a home and enrolled their children in a school district where they remained for a period of five years. After this length of time, they were informed by two school districts that they were actually living in a different district than the one in which their children were enrolled. The Oklahoma supreme court ruled that the children could stay in the district where they had attended school for five years, even though they lived in the other



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district. "De facto student status" had been attained. The district claiming them as residents could not be considered as the "exclusive provider of services" which it had withheld for five years.

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