



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

SB2670

Introduced 1/20/2006, by Sen. Jacqueline Y. Collins

#### SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.12b  
30 ILCS 805/8.30 new

Amends the School Code. With respect to residency, provides that "legal custody" includes custody by an adult who demonstrates that he or she has assumed and exercises primary (instead of legal) responsibility for the pupil. Provides that a school district must require an adult claiming custody because he or she exercises primary responsibility for the pupil to complete and sign an Affidavit of Residency. Provides that an adult establishing certain types of custody is authorized and must agree to act in the place of the parent with respect to certain decisions and contacts. Provides that once certain types of custody are established, the school district is no longer responsible for communicating with the parents of a pupil unless a parent asserts custody. Provides that once a school board has made its decision with regard to a residency hearing, any party to the hearing may appeal the decision to the State Superintendent of Education. Provides that the decision of the State Superintendent of Education is final and subject to judicial review. Makes related changes. Amends the State Mandates Act to require implementation without reimbursement. Effective immediately.

LRB094 17992 LJB 53295 b

FISCAL NOTE ACT  
MAY APPLY

STATE MANDATES  
ACT MAY REQUIRE  
REIMBURSEMENT

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The School Code is amended by changing Section  
5 10-20.12b as follows:

6 (105 ILCS 5/10-20.12b)

7 Sec. 10-20.12b. Residency; payment of tuition; hearing;  
8 criminal penalty.

9 (a) For purposes of this Section:

10 (1) The residence of a person who has legal custody of  
11 a pupil is deemed to be the residence of the pupil.

12 (2) "Legal custody" means one of the following:

13 (i) Custody exercised by a natural or adoptive  
14 parent with whom the pupil resides.

15 (ii) Custody granted by order of a court of  
16 competent jurisdiction to a person with whom the pupil  
17 resides for reasons other than to have access to the  
18 educational programs of the district.

19 (iii) Custody exercised under a statutory  
20 short-term guardianship, provided that within 60 days  
21 of the pupil's enrollment a court order is entered that  
22 establishes a permanent guardianship and grants  
23 custody to a person with whom the pupil resides for  
24 reasons other than to have access to the educational  
25 programs of the district.

26 (iv) Custody exercised by an adult caretaker  
27 relative who is receiving aid under the Illinois Public  
28 Aid Code for the pupil who resides with that adult  
29 caretaker relative for purposes other than to have  
30 access to the educational programs of the district.

31 (v) Custody exercised by an adult who demonstrates  
32 that, in fact, he or she has assumed and exercises

1           primary ~~legal~~ responsibility for the pupil and  
2           provides the pupil with a regular fixed night-time  
3           abode for purposes other than to have access to the  
4           educational programs of the district.

5           (a-5) If a pupil's change of residence is due to the  
6           military service obligation of a person who has legal custody  
7           of the pupil, then, upon the written request of the person  
8           having legal custody of the pupil, the residence of the pupil  
9           is deemed for all purposes relating to enrollment (including  
10          tuition, fees, and costs), for the duration of the custodian's  
11          military service obligation, to be the same as the residence of  
12          the pupil immediately before the change of residence caused by  
13          the military service obligation. A school district is not  
14          responsible for providing transportation to or from school for  
15          a pupil whose residence is determined under this subsection  
16          (a-5). School districts shall facilitate re-enrollment when  
17          necessary to comply with this subsection (a-5).

18          (a-10) A school district must require an adult claiming  
19          custody under item (v) of subdivision (2) of subsection (a) of  
20          this Section to complete and sign an Affidavit of Residency and  
21          Enrollment, developed by the State Board of Education, prior to  
22          enrollment of the pupil. An adult who establishes custody under  
23          item (iv) or (v) of subdivision (2) of subsection (a) of this  
24          Section is authorized and must agree to act in the place of the  
25          parent of the pupil with respect to the pupil's education  
26          decisions and to be the person the school contacts regarding  
27          truancy, discipline, and school-based medical care. Once  
28          custody is established under item (iv) or (v) of subdivision  
29          (2) of subsection (a) of this Section, a school district is no  
30          longer responsible for communicating with the parent or parents  
31          of the pupil, unless and until a parent steps forward to assert  
32          custody. Custody established under item (iv) or (v) of  
33          subdivision (2) of subsection (a) of this Section may be  
34          cancelled at any time upon written assertion by a parent or  
35          legal guardian of his or her custody rights with respect to the  
36          pupil.

1           (b) Except as otherwise provided under Section 10-22.5a,  
2 only resident pupils of a school district may attend the  
3 schools of the district without payment of the tuition required  
4 to be charged under Section 10-20.12a. However, children for  
5 whom the Guardianship Administrator of the Department of  
6 Children and Family Services has been appointed temporary  
7 custodian or guardian of the person of a child shall not be  
8 charged tuition as a nonresident pupil if the child was placed  
9 by the Department of Children and Family Services with a foster  
10 parent or placed in another type of child care facility and the  
11 foster parent or child care facility is located in a school  
12 district other than the child's former school district and it  
13 is determined by the Department of Children and Family Services  
14 to be in the child's best interest to maintain attendance at  
15 his or her former school district.

16           (c) The provisions of this subsection do not apply in  
17 school districts having a population of 500,000 or more. If a  
18 school board in a school district with a population of less  
19 than 500,000 determines that a pupil who is attending school in  
20 the district on a tuition free basis is a nonresident of the  
21 district for whom tuition is required to be charged under  
22 Section 10-20.12a, the board shall notify the person who  
23 enrolled the pupil of the amount of the tuition charged under  
24 Section 10-20.12a that is due to the district for the  
25 nonresident pupil's attendance in the district's schools. The  
26 notice shall be given by certified mail, return receipt  
27 requested. Within 10 days after receipt of the notice, the  
28 person who enrolled the pupil may request a hearing to review  
29 the determination of the school board. The request shall be  
30 sent by certified mail, return receipt requested, to the  
31 district superintendent. Within 10 days after receipt of the  
32 request, the board shall notify, by certified mail, return  
33 receipt requested, the person requesting the hearing of the  
34 time and place of the hearing, which shall be held not less  
35 than 10 nor more than 20 days after the notice of hearing is  
36 given. The board or a hearing officer designated by the board

1 shall conduct the hearing. The board and the person who  
2 enrolled the pupil may be represented at the hearing by  
3 representatives of their choice. At the hearing, the person who  
4 enrolled the pupil shall have the burden of going forward with  
5 the evidence concerning the pupil's residency. If the hearing  
6 is conducted by a hearing officer, the hearing officer, within  
7 5 days after the conclusion of the hearing, shall send a  
8 written report of his or her findings by certified mail, return  
9 receipt requested, to the school board and to the person who  
10 enrolled the pupil. The person who enrolled the pupil may,  
11 within 5 days after receiving the findings, file written  
12 objections to the findings with the school board by sending the  
13 objections by certified mail, return receipt requested,  
14 addressed to the district superintendent. Whether the hearing  
15 is conducted by the school board or a hearing officer, the  
16 school board shall, within 15 days after the conclusion of the  
17 hearing, decide whether or not the pupil is a resident of the  
18 district and the amount of any tuition required to be charged  
19 under Section 10-20.12a as a result of the pupil's attendance  
20 in the schools of the district. The school board shall send a  
21 copy of its decision to the person who enrolled the pupil, and  
22 the decision of the school board shall be final. After the  
23 school board has made its decision, any party to the hearing  
24 may appeal the decision in writing by certified mail, return  
25 receipt requested, to the State Superintendent of Education.  
26 The decision of the State Superintendent of Education shall be  
27 final and subject to judicial review under the Administrative  
28 Review Law. The State Board of Education may adopt and enforce  
29 any rules necessary to implement and administer this subsection  
30 (c).

31 (c-5) The provisions of this subsection apply only in  
32 school districts having a population of 500,000 or more. If the  
33 board of education of a school district with a population of  
34 500,000 or more determines that a pupil who is attending school  
35 in the district on a tuition free basis is a nonresident of the  
36 district for whom tuition is required to be charged under

1 Section 10-20.12a, the board shall notify the person who  
2 enrolled the pupil of the amount of the tuition charged under  
3 Section 10-20.12a that is due to the district for the  
4 nonresident pupil's attendance in the district's schools. The  
5 notice shall be given by certified mail, return receipt  
6 requested. Within 10 days after receipt of the notice, the  
7 person who enrolled the pupil may request a hearing to review  
8 the determination of the school board. The request shall be  
9 sent by certified mail, return receipt requested, to the  
10 district superintendent. Within 30 days after receipt of the  
11 request, the board shall notify, by certified mail, return  
12 receipt requested, the person requesting the hearing of the  
13 time and place of the hearing, which shall be held not less  
14 than 10 nor more than 30 days after the notice of hearing is  
15 given. The board or a hearing officer designated by the board  
16 shall conduct the hearing. The board and the person who  
17 enrolled the pupil may each be represented at the hearing by a  
18 representative of their choice. At the hearing, the person who  
19 enrolled the pupil shall have the burden of going forward with  
20 the evidence concerning the pupil's residency. If the hearing  
21 is conducted by a hearing officer, the hearing officer, within  
22 20 days after the conclusion of the hearing, shall serve a  
23 written report of his or her findings by personal service or by  
24 certified mail, return receipt requested, to the school board  
25 and to the person who enrolled the pupil. The person who  
26 enrolled the pupil may, within 10 days after receiving the  
27 findings, file written objections to the findings with the  
28 board of education by sending the objections by certified mail,  
29 return receipt requested, addressed to the general  
30 superintendent of schools. If the hearing is conducted by the  
31 board of education, the board shall, within 45 days after the  
32 conclusion of the hearing, decide whether or not the pupil is a  
33 resident of the district and the amount of any tuition required  
34 to be charged under Section 10-20.12a as a result of the  
35 pupil's attendance in the schools of the district. If the  
36 hearing is conducted by a hearing officer, the board of

1 education shall, within 45 days after the receipt of the  
2 hearing officer's findings, decide whether or not the pupil is  
3 a resident of the district and the amount of any tuition  
4 required to be charged under Section 10-20.12a as a result of  
5 the pupil's attendance in the schools of the district. The  
6 board of education shall send, by certified mail, return  
7 receipt requested, a copy of its decision to the person who  
8 enrolled the pupil, ~~and the decision of the board shall be~~  
9 ~~final.~~ After the board of education has made its decision, any  
10 party to the hearing may appeal the decision in writing by  
11 certified mail, return receipt requested, to the State  
12 Superintendent of Education. The decision of the State  
13 Superintendent of Education shall be final and subject to  
14 judicial review under the Administrative Review Law. The State  
15 Board of Education may adopt and enforce any rules necessary to  
16 implement and administer this subsection (c-5).

17 (d) If a hearing is requested under subsection (c) or (c-5)  
18 to review the determination of the school board or board of  
19 education that a nonresident pupil is attending the schools of  
20 the district without payment of the tuition required to be  
21 charged under Section 10-20.12a, the pupil may, at the request  
22 of a person who enrolled the pupil, continue attendance at the  
23 schools of the district pending a ~~final~~ decision of the board  
24 following the hearing and, if applicable, the final decision of  
25 the State Superintendent of Education. However, attendance of  
26 that pupil in the schools of the district as authorized by this  
27 subsection (d) shall not relieve any person who enrolled the  
28 pupil of the obligation to pay the tuition charged for that  
29 attendance under Section 10-20.12a if the ~~final~~ decision of the  
30 board or, if applicable, the final decision of the State  
31 Superintendent of Education is that the pupil is a nonresident  
32 of the district. If a pupil is determined to be a nonresident  
33 of the district for whom tuition is required to be charged  
34 pursuant to this Section, the board shall refuse to permit the  
35 pupil to continue attending the schools of the district unless  
36 the required tuition is paid for the pupil.

1 (e) Except for a pupil referred to in subsection (b) of  
2 Section 10-22.5a, a pupil referred to in Section 10-20.12a, or  
3 a pupil referred to in subsection (b) of this Section, a person  
4 who knowingly enrolls or attempts to enroll in the schools of a  
5 school district on a tuition free basis a pupil known by that  
6 person to be a nonresident of the district shall be guilty of a  
7 Class C misdemeanor.

8 (f) A person who knowingly or wilfully presents to any  
9 school district any false information regarding the residency  
10 of a pupil for the purpose of enabling that pupil to attend any  
11 school in that district without the payment of a nonresident  
12 tuition charge shall be guilty of a Class C misdemeanor.

13 (g) The provisions of this Section are subject to the  
14 provisions of the Education for Homeless Children Act. Nothing  
15 in this Section shall be construed to apply to or require the  
16 payment of tuition by a parent or guardian of a "homeless  
17 child" (as that term is defined in Section 1-5 of the Education  
18 for Homeless Children Act) in connection with or as a result of  
19 the homeless child's continued education or enrollment in a  
20 school that is chosen in accordance with any of the options  
21 provided in Section 1-10 of that Act.

22 (Source: P.A. 94-309, eff. 7-25-05.)

23 Section 90. The State Mandates Act is amended by adding  
24 Section 8.30 as follows:

25 (30 ILCS 805/8.30 new)

26 Sec. 8.30. Exempt mandate. Notwithstanding Sections 6 and 8  
27 of this Act, no reimbursement by the State is required for the  
28 implementation of any mandate created by this amendatory Act of  
29 the 94th General Assembly.

30 Section 99. Effective date. This Act takes effect upon  
31 becoming law.