

Student Residency: HB 4606 Would Make Significant Changes in Hearing Procedures

Student residency has long been a concern of school districts in Illinois. The current process for determining disputed residency issues is performed under the authority of the board of education and the final decision rests with the board. School Code Section 10-20.12b specifically states that, “[t]he board of education’s decision is final.” Courts could review the decision, but have generally given deference to the board’s factual findings.

Now, however, House Bill 4606, passed by both houses and awaiting consideration by the Governor, would make significant changes to Section 10-20.12b. Under these changes, in addition to the current notice to the person who enrolled pupils of their right to a hearing, a district must detail the specific reasons why it believes that the pupil is a non-resident of the district. If a hearing is requested, at least three days prior

to the hearing each party must disclose to the other party all written evidence and testimony that it may submit during the hearing, as well as a list of witnesses that may be called to testify. Further, the hearing notice must inform the person requesting the hearing that any written evidence and testimony or witnesses not disclosed to the other party at least three days prior to the hearing will be barred.

But the most significant change made by the bill pertains to the finality of the board's decision. House Bill 4606 requires a district to inform the person who enrolled the pupil that he or she may petition the regional superintendent of schools who "exercises supervision and control of the board to review the board's decision." (This review would be performed by the appropriate intermediate service center in suburban Cook County.) During this review process, the pupil may continue attending the schools of the district. It is the burden of the person who enrolled the student to file the petition. At the school district's expense, within five calendar days after receipt of the petition, the superintendent is charged with delivering to the regional superintendent the written decision of the board, any written evidence and testimony that was

submitted to the parties during the hearing, a list of all witnesses who testified during the hearing and written minutes or a transcript of the hearing. The board may also file a written response to the petition with the regional superintendent. The regional superintendent's review is limited to this written record; no new evidence may be submitted. The regional superintendent must render a written decision as to whether or not there is clear and convincing evidence that the pupil is a resident of the district and eligible to attend district schools on a tuition-free basis. The regional superintendent must specify in detail the rationale behind the decision. The decision of the regional superintendent of schools is final, subject only to judicial review.

House Bill 4606 does not alter the current School Code definitions of residency or legal custody and does not remove the enrolling person's burden of going forward with evidence of residency.

House Bill 4606 will now be sent to the Governor's desk for signature. If it becomes law, the effect of its changes may be far-reaching, most notably in how a regional superintendent of schools exercises the authority to review a board's residency



decision.

If you have questions regarding your district's obligations regarding student residency, please contact one of our attorneys in Oak Brook at (630) 928-1200 or Flossmoor, (708) 799-6766.