

GUIDANCE REGARDING LAWS RELATED TO ADMISSION TO TEXAS PUBLIC SCHOOLS
(For Participants in Address Confidentiality Program)

INTRODUCTION

Under Texas law, the eligibility of a student to admission in a particular school district or open-enrollment charter school generally depends on certain facts regarding the location of the student's residence. For this reason, a student who does not disclose the student's actual residence to a public school because the student resides with an adult who is in the Address Confidentiality Program or the student is an adult who is independently enrolled in the Address Confidentiality Program needs an alternative way to verify eligibility for admission to the public school.

A form affidavit is available on the Texas Education Agency website that is intended to be used to certify certain information relating to public school admission with regard to participants in the Address Confidentiality Program. The Texas Education Agency supports the use of the affidavit.

This guidance is intended to provide a person completing the affidavit with information regarding Texas school laws relating to eligibility for public school admission and eligibility for school transportation. The person enrolling the child may obtain from representatives of the school district or charter school information regarding the school district's geographical boundaries or the charter school's designated geographical area, campus assignment policies, campus attendance zones, and school transportation policies.

Eligibility for Admission under Sec. 25.001 of the Texas Education Code

Section 25.001 establishes the bases of eligibility for admission to a particular **school district**. **Open-enrollment charter schools** also apply Section 25.001 for the purposes of determining whether a student meets the residency requirements for the geographic area designated in the school's charter. Laws relating to age eligibility for admission are not addressed in this document.

Bases of eligibility: A student's entitlement to admission is established if any one (or more) of the bases for admission in §25.001 applies to the student. Most, but not all, of the bases require that the student live in the school district. If the student is applying for admission in an open-enrollment charter school, the references in the descriptions of eligibility that follow apply to the charter's designated geographical area instead of a school district's geographical boundaries.

§25.001(b)(1) (Parent and Student in District)

This provision entitles a student to admission if the student and either parent reside in the district. Although this subdivision applies only if the student and parent reside in the same district, it does not require that they live at the same address. (For a student living in a different district, separate and apart from a parent, guardian, or other person having lawful control of the student under a court order, see §25.001(b)(4).)

§25.001(b)(2) (Parent Only in District)

This provision entitles a student who resides in Texas but does not reside in the district to admission if 1) a parent of the child resides in the district and 2) the parent is a joint managing conservator, sole managing conservator, or possessory conservator of the child. This provision does not apply to all parents living apart from their children. It applies only if the parent is a joint managing conservator, sole managing conservator, or possessory conservator. Those designations are established by the order of a court in a suit affecting the parent-child relationship under Title 5 of the Texas Family Code. If the parent's relationship with the child has not been the subject of such a suit, this provision of §25.001(b) does not apply. The designation by a court of a parent as a joint managing conservator, sole managing conservator, or possessory

conservator can occur under a number of different circumstances, but occurs most commonly in relationship to a divorce proceeding. A temporary order pending final disposition of a divorce action would qualify a student for admission under this provision.

§25.001(b)(3) (Student and Guardian or Person with Lawful Control in District)

This provision entitles a student to admission if the student and the student's "guardian or other person having lawful control of the [student] under a court order reside within the school district." (For a student living separate and apart from a parent, guardian, or other person having lawful control of the student, see §25.001(b)(4).)

To determine a student's entitlement under §25.001(b)(3), a district must determine if a court order exists that identifies a guardian or other person with lawful control residing in the district. A child is entitled to admission if a court orders the placement of the child with a person or in a facility in the district or if, pursuant to a court order, an entity such as Child Protective Services or the Texas Youth Commission places a child in the district. If such a court order exists, the child is entitled to admission under this provision regardless of whether the student would be ineligible under the exclusions of §25.001(d), which are discussed below.

§25.001(b)(4) (Student Only in District)

This provision, by reference to §25.001(d), allows a student under 18 years of age to "establish a residence for the purpose of attending the public schools separate and apart from the [student's] parent, guardian, or other person having lawful control of the [student] under a court order..." §25.001(d). However, the student's presence in the district may not be "for the primary purpose of participation in extracurricular activities." Id.

The district is not required to admit a student under §25.001(b)(4) and (d) if the student:

- (1) has engaged in conduct or misbehavior within the preceding year that has resulted in:
 - (A) removal to a disciplinary alternative education program; or
 - (B) expulsion;
- (2) has engaged in delinquent conduct or conduct in need of supervision and is on probation or other conditional release for that conduct; or
- (3) has been convicted of a criminal offense and is on other conditional release. §25.001(d).

These exceptions apply only if a student is living in a different district than the student's parent, guardian, or other person with lawful control of the child under a court order. The exceptions cannot be used to prevent a student eligible for admission under a different provision of §25.001 from being enrolled, including homeless students.

§25.001(b)(5) (Homeless Student)

This provision entitles a person defined as "homeless" under 42 U.S.C. §11302 to admission "regardless of the residence of the person, of either parent of the person, or of the person's guardian or other person having lawful control of the person." Therefore, a person who is homeless is entitled to admission in any Texas school district. The definition in 42 U.S.C. §11302 is similar, but not identical, to the definition of "homeless children and youths" enacted in the No Child Left Behind (NCLB) legislation enacted by Congress in 2002. As the definition in the NCLB legislation applies specifically under federal law to the enrollment of homeless children and youth, the Texas Education Agency advises that school districts apply the NCLB definition, in addition to the definition in 42 U.S.C. §11302, when determining if a student is eligible for admission under §25.001(b)(5). Both definitions are set out on the next page.

42 U.S.C. §11302 provides:

For purposes of this chapter, the term "homeless" or "homeless individual or homeless person" includes -

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is -
 - (A) a supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);
 - (B) an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (C) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

42 U.S.C. §11434a provides:

* * * * *

(2) The term "homeless children and youths"--

- (A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and
- (B) includes--
 - (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
 - (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) of this title);
 - (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - (iv) migratory children (as such term is defined in section 6399 of Title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

§ 25.001(b)(6) (Foreign Exchange Student)

This provision entitles a foreign exchange student to admission if the student is placed by a nationally recognized foreign exchange program with a host family that resides in the school district unless the district has been granted a waiver by the commissioner of education.

§25.001(b)(7) (Student in Residential Facility)

This provision entitles a student residing at a residential facility located in the district to admission. A “residential facility” is defined in §5.001(8) as follows:

“Residential facility” means:

- (A) a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any noneducational purpose; and
- (B) any person or entity that contracts with or is funded, licensed, certified, or regulated by a state agency or political subdivision to provide custody or care for a person under Paragraph (A).

§25.001(b)(8) (Adult Student)

This provision entitles a student residing in the district to admission if the student is over 18 years of age or if the student is less than 18 years of age and has had the disabilities of minority removed through marriage or as otherwise permitted by law.

§25.001(b)(9) (Grandparent in District)

This provision entitles a student who resides in Texas but does not reside in the district to admission if a grandparent of the student resides in the district and the grandparent provides a substantial amount of after-school care for the student as determined by the local school board.

§25.001(f) and (g) (Foster Care)

The law makes special provision for children in foster care. Subsection (f) provides for tuition-free admission in the district in which the foster parents reside. Subsection (g) specifically provides a high school student placed in temporary foster care with the option of continuing to attend, without payment of tuition, the school in which the student was enrolled at the time of placement, regardless of the residence of the foster parents.

§29.153 (Prekindergarten)

Under Subchapter E of Chapter 29, there are additional eligibility criteria for prekindergarten programs for three and four year olds. A child of the appropriate age is eligible for a prekindergarten program if the child:

- (1) is unable to speak and comprehend the English language;
- (2) is educationally disadvantaged¹;
- (3) is a homeless child²;
- (4) is the child of an active duty member of the armed forces, including state military forces or a reserve component of the armed forces, who is ordered to active duty;
- (5) is the child of a member of the armed forces, including state military forces or a reserve component of the armed forces, who was injured or killed while serving on active duty; or

¹ “Educationally disadvantaged” means “eligible to participate in the national free or reduced price lunch program”. See §5.001(4).

² As defined in 42 U.S.C. §11434a(2). See discussion of §25.001(b)(5) above.

- (6) is or ever has been in the conservatorship of the Department of Family and Protective Services following an adversary hearing held as provided by Section 262.201, Family Code.

Campus Assignment

A student's campus assignment is determined by local school policy. Assignments are often determined by the location of the student's residence within a geographical attendance zone designated by the school board. Please consult with your local school officials regarding local policies regarding campus assignment.

School Transportation

Under state law, a school district or open-enrollment charter may receive state funding for transportation provided to and from school for students who either 1) reside two or more miles from the student's designated campus or 2) reside within two miles of the school but are subject to hazardous traffic conditions, as determined by the school board, if they walk to school. The applicable law is Section 42.155 of the Texas Education Code.

If a student is assigned to a school transportation route, the student's name but not the student's address must be recorded on a school bus roster that is provided to the school bus driver. If you are interested in school transportation for your child, please consult with your local school officials regarding transportation policies and procedures.

State Statutes

The entire text of the Texas Education Code and other Texas statutes are available at <http://tlo2.tlc.state.tx.us/statutes/statutes.html>.