

HB3858



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3858

by Rep. Jaime M. Andrade, Jr.

SYNOPSIS AS INTRODUCED:

105 ILCS 5/10-20.12b

Amends the School Code. Provides that a person who knowingly enrolls or attempts to enroll, on a tuition-free basis, a pupil known by that person to be a nonresident of a school district having a population of 500,000 or more or who knowingly or wilfully presents to a school district having a population of 500,000 or more any false information regarding the residency of a pupil for the purpose of enabling that pupil to attend any school in that district without the payment of a nonresident tuition charge shall also be charged a civil penalty of at least \$30,000. Effective immediately.

LRB100 10781 MLM 21012 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

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

1 reasons other than to have access to the educational
2 programs of the district.

3 (iv) Custody exercised by an adult caretaker
4 relative who is receiving aid under the Illinois Public
5 Aid Code for the pupil who resides with that adult
6 caretaker relative for purposes other than to have
7 access to the educational programs of the district.

8 (v) Custody exercised by an adult who demonstrates
9 that, in fact, he or she has assumed and exercises
10 legal responsibility for the pupil and provides the
11 pupil with a regular fixed night-time abode for
12 purposes other than to have access to the educational
13 programs of the district.

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

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 a nonresident
25 pupil's attendance in the district's schools. The notice shall
26 detail the specific reasons why the board believes that the

1 pupil is a nonresident of the district and shall be given by
2 certified mail, return receipt requested. Within 10 calendar
3 days after receipt of the notice, the person who enrolled the
4 pupil may request a hearing to review the determination of the
5 school board. The request shall be sent by certified mail,
6 return receipt requested, to the district superintendent.
7 Within 10 calendar days after receipt of the request, the board
8 shall notify, by certified mail, return receipt requested, the
9 person requesting the hearing of the time and place of the
10 hearing, which shall be held not less than 10 nor more than 20
11 calendar days after the notice of hearing is given. At least 3
12 calendar days prior to the hearing, each party shall disclose
13 to the other party all written evidence and testimony that it
14 may submit during the hearing and a list of witnesses that it
15 may call to testify during the hearing. The hearing notice
16 shall notify the person requesting the hearing that any written
17 evidence and testimony or witnesses not disclosed to the other
18 party at least 3 calendar days prior to the hearing are barred
19 at the hearing without the consent of the other party. The
20 board or a hearing officer designated by the board shall
21 conduct the hearing. The board and the person who enrolled the
22 pupil may be represented at the hearing by representatives of
23 their choice. At the hearing, the person who enrolled the pupil
24 shall have the burden of going forward with the evidence
25 concerning the pupil's residency. If the hearing is conducted
26 by a hearing officer, the hearing officer, within 5 calendar

1 days after the conclusion of the hearing, shall send a written
2 report of his or her findings by certified mail, return receipt
3 requested, to the school board and to the person who enrolled
4 the pupil. The person who enrolled the pupil may, within 5
5 calendar days after receiving the findings, file written
6 objections to the findings with the school board by sending the
7 objections by certified mail, return receipt requested,
8 addressed to the district superintendent. Whether the hearing
9 is conducted by the school board or a hearing officer, the
10 school board shall, within 30 calendar days after the
11 conclusion of the hearing, decide whether or not the pupil is a
12 resident of the district and the amount of any tuition required
13 to be charged under Section 10-20.12a as a result of the
14 pupil's attendance in the schools of the district. The school
15 board shall send a copy of its decision within 5 calendar days
16 of its decision to the person who enrolled the pupil by
17 certified mail, return receipt requested. This decision must
18 inform the person who enrolled the pupil that he or she may,
19 within 5 calendar days after receipt of the decision of the
20 board, petition the regional superintendent of schools to
21 review the decision. The decision must also include
22 notification that, at the request of the person who enrolled
23 the pupil, the pupil may continue attending the schools of the
24 district pending the regional superintendent of schools'
25 review of the board's decision but that tuition shall continue
26 to be assessed under Section 10-20.12a of this Code during the

1 review period and become due upon a final determination of the
2 regional superintendent of schools that the student is a
3 nonresident.

4 Within 5 calendar days after receipt of the decision of the
5 board pursuant to this subsection (c) of this Section, the
6 person who enrolled the pupil may petition the regional
7 superintendent of schools who exercises supervision and
8 control of the board to review the board's decision. The
9 petition must include the basis for the request and be sent by
10 certified mail, return receipt requested, to both the regional
11 superintendent of schools and the district superintendent.

12 Within 5 calendar days after receipt of the petition, the
13 board must deliver to the regional superintendent of schools
14 the written decision of the board, any written evidence and
15 testimony that was submitted by the parties during the hearing,
16 a list of all witnesses that testified during the hearing, and
17 any existing written minutes or transcript of the hearing or
18 verbatim record of the hearing in the form of an audio or video
19 recording documenting the hearing. The board may also provide
20 the regional superintendent of schools and the petitioner with
21 a written response to the petition. The regional superintendent
22 of schools' review of the board's decision is limited to the
23 documentation submitted to the regional superintendent of
24 schools pursuant to this Section.

25 Within 10 calendar days after receipt of the documentation
26 provided by the school district pursuant to this Section, the

1 regional superintendent of schools shall issue a written
2 decision as to whether or not there is clear and convincing
3 evidence that the pupil is a resident of the district pursuant
4 to this Section and eligible to attend the district's schools
5 on a tuition-free basis. The decision shall be transmitted to
6 the board and the person who enrolled the pupil and shall, with
7 specificity, detail the rationale behind the decision.

8 (c-5) The provisions of this subsection apply only in
9 school districts having a population of 500,000 or more. If the
10 board of education of a school district with a population of
11 500,000 or more determines that a pupil who is attending school
12 in the district on a tuition free basis is a nonresident of the
13 district for whom tuition is required to be charged under
14 Section 10-20.12a, the board shall notify the person who
15 enrolled the pupil of the amount of the tuition charged under
16 Section 10-20.12a that is due to the district for the
17 nonresident pupil's attendance in the district's schools. The
18 notice shall be given by certified mail, return receipt
19 requested. Within 10 calendar days after receipt of the notice,
20 the person who enrolled the pupil may request a hearing to
21 review the determination of the school board. The request shall
22 be sent by certified mail, return receipt requested, to the
23 district superintendent. Within 30 calendar days after receipt
24 of the request, the board shall notify, by certified mail,
25 return receipt requested, the person requesting the hearing of
26 the time and place of the hearing, which shall be held not less

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

1 district and the amount of any tuition required to be charged
2 under Section 10-20.12a as a result of the pupil's attendance
3 in the schools of the district. The board of education shall
4 send, by certified mail, return receipt requested, a copy of
5 its decision to the person who enrolled the pupil, and the
6 decision of the board shall be final.

7 (d) If a hearing is requested under subsection (c) of this
8 Section to review the determination of the school board or
9 board of education that a nonresident pupil is attending the
10 schools of the district without payment of the tuition required
11 to be charged under Section 10-20.12a, the pupil may, at the
12 request of the person who enrolled the pupil, continue
13 attendance at the schools of the district pending the decision
14 of the board or regional superintendent of schools, as
15 applicable, and the school district's payments under Section
16 18-8.05 of this Code shall not be adjusted due to tuition
17 collection under this Section. However, attendance of that
18 pupil in the schools of the district as authorized by this
19 subsection (d) shall not relieve any person who enrolled the
20 pupil of the obligation to pay the tuition charged for that
21 attendance under Section 10-20.12a if the final decision of the
22 board or regional superintendent of schools is that the pupil
23 is a nonresident of the district. If a pupil is determined to
24 be a nonresident of the district for whom tuition is required
25 to be charged pursuant to this Section, the board shall refuse
26 to permit the pupil to continue attending the schools of the

1 district unless the required tuition is paid for the pupil.

2 (d-5) If a hearing is requested under subsection (c-5) of
3 this Section to review the determination of the board of
4 education that a nonresident pupil is attending the schools of
5 the district without payment of the tuition required to be
6 charged under Section 10-20.12a of this Code, the pupil may, at
7 the request of the person who enrolled the pupil, continue
8 attendance at the schools of the district pending a final
9 decision of the board following the hearing. However,
10 attendance of that pupil in the schools of the district as
11 authorized by this subsection (d-5) shall not relieve any
12 person who enrolled the pupil of the obligation to pay the
13 tuition charged for that attendance under Section 10-20.12a of
14 this Code if the final decision of the board is that the pupil
15 is a nonresident of the district. If a pupil is determined to
16 be a nonresident of the district for whom tuition is required
17 to be charged pursuant to this Section, the board shall refuse
18 to permit the pupil to continue attending the schools of the
19 district unless the required tuition is paid for the pupil.

20 (e) Except for a pupil referred to in subsection (b) of
21 Section 10-22.5a, a pupil referred to in Section 10-20.12a, or
22 a pupil referred to in subsection (b) of this Section, a person
23 who knowingly enrolls or attempts to enroll in the schools of a
24 school district on a tuition free basis a pupil known by that
25 person to be a nonresident of the district shall be guilty of a
26 Class C misdemeanor.

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

6 (f-5) In a school district having a population of 500,000
7 or more, a person who violates subsection (e) or (f) of this
8 Section shall also be charged a civil penalty of at least
9 \$30,000.

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

19 (Source: P.A. 99-670, eff. 1-1-17.)

20 Section 99. Effective date. This Act takes effect upon
21 becoming law.