

Tackling Tough Enrollment and Residency Issues

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Although school is already in session, we receive calls every week from clients seeking answers to difficult enrollment and residency questions. In an increasingly-mobile society where families live in alternative arrangements, it can be very challenging to sort through the variety of issues that arrive with each new student. From discipline and possible criminal issues at a former school, to uncertain guardianship, the legal questions facing school administrators when a student presents for enrollment are often complex and require immediate attention. In this article, we explore these matters, as well as other unique enrollment issues, through a hypothetical enrollment scenario.

Tina Transfer is here, now what?

Transfer-student Tina and Annie, a woman claiming to be her guardian, appear at your district to enroll Tina for her junior year. Annie is able to produce current utility statements indicating that she lives within your district boundaries. Annie also hands a document to you titled “Transfer of Legal Decision-Making Authority for Educational Purposes.” The document indicates that Tina’s mother has taken a job out-of-state after the death of Tina’s father, and Tina is living with Annie. Tina’s mother has signed the document and it has been notarized. After providing the document that purports to transfer educational decision-making authority to her, Annie is forthcoming with the fact that Tina has been in some trouble recently.

Last spring, Tina and her boyfriend Billy were arrested while parked in Billy’s car at Tina’s former school for felony possession of marijuana, and felony possession of a firearm. Annie swears that Tina was in the wrong place at the wrong time, and their criminal attorney has assured them that Tina will not be convicted of any felony counts. Tina’s next court date is not scheduled to take place for another month. Your records request to her former school indicated that she was suspended for 45 days, but a manifestation determination review determined that Tina’s conduct was related to her disability of impulse control disorder. You have suspicions that the manifestation determination was based, in part, on an understanding that Tina may be transferring for the upcoming school year. What do we tell Annie and Tina upon their attempt to enroll this student in your district?

Residency

The first question is whether Tina is a resident of your school district or does a residency exception apply to her. “Resident student” is defined as a student living with a parent or legal guardian within the boundaries of a district.



From the facts provided above, it is clear that Tina is residing within the district boundary, but is she living with a legal guardian? The question of legal guardianship brings into play the document that was provided by Annie when she presented Tina for enrollment. The document titled “Transfer of Legal Decision-Making Authority for Educational Purposes” seems to be an attempt to satisfy the requirements of an educational guardianship under Missouri Revised Statute 475.060. However, the document described in this hypothetical does not meet the requirements of the statute. The statute allowing for a guardianship for school registration specifically requires the filing of a petition in circuit court and the recognition of the guardianship by the court. In this case, the information that we have gathered indicated that Annie had not pursued a proper guardianship for school registration because no court filing had taken place and no court order of guardianship has been issued.

Even though Annie is not legally Tina’s guardian for educational purposes under Missouri Revised Statute 475.060, Tina may still fall under one of the residency exceptions listed in Missouri Revised Statutes 167.020 or 167.151. The provisions of Missouri Revised Statute 167.020 identify and define homeless children. For purposes relevant to Tina, a “homeless child” or “homeless youth” means a person less than twenty-one years of age who lacks a fixed, regular and adequate nighttime residence, including a child or youth who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason. Given Tina’s living situation, Annie may very well argue that Tina is living with her due to reasons of economic or family hardship. Depending on the unique circumstances of Tina’s family and her economic situation, this possible exception may be worth considering, but it would likely take some additional fact-finding by your district to determine if she is subject to financial hardship. Let’s assume for the purposes of this article that upon discovering further financial information, your district determines that Tina does not meet the financial hardship exception of the statute. Your residency department makes a final determination that Tina is not a resident of the district. Has Tina’s ultimate fate in your district been decided, or is it possible for Tina to attend your school and not be a resident?

Even though a non-resident, Tina is still living in your district, so do you feel some obligation to educate her? As a non-resident, Missouri Revised Statute 167.151 allows Tina to attend your district, provided that she pay the tuition prescribed for non-resident students by your board of education. Problem solved, right? What about the fact that Tina’s father is deceased and her mother is a widow? Missouri Revised Statute 167.151 also provides a number of exceptions for non-residents to attend school without paying tuition. In Tina’s particular situation, we cannot overlook the exception found in subsection 2 of Missouri Revised Statute 167.151. This statute allows for a non-resident to attend any district in the state in which they have a permanent residence, tuition-free, when the student has only one parent living, is between the ages of six and twenty years, and is unable to pay tuition. On all accounts, Tina qualifies for this exception described in Missouri Revised Statute 167.151. Based upon this additional consideration, Tina is allowed to attend school in your district, right? Well, what about her pending criminal charges and her disciplinary status at her former school?

Discipline Considerations

Now that we have a handle on Tina’s residency, we move onto her pending legal issues with the State of Missouri and her disciplinary history with her previous school district. As a part of the enrollment process, Annie and Tina provided an affidavit that swore Tina was not currently on suspension from any other school. Technically, Annie and Tina are providing accurate information because Tina’s suspension at her prior school was terminated when the manifestation review team decided that the conduct for which she was originally suspended was related to her disability. However, at the time of Tina’s enrollment, she is still facing felony charges of marijuana possession and felony possession of a firearm. Given these facts, we reference the Missouri Safe Schools Act, which allows the school board to suspend students who have been charged with, been convicted of, or pled guilty to a felony in a court of general jurisdiction. Tina’s two felony charges would certainly seem to qualify under this section, but is your district required to suspend her? The answer is no, your district is not required to suspend Tina, but it can consider doing so. If suspension does not seem like the best option for this student, the Safe Schools Act also allows for Tina’s education in an alternative school or other program based upon her needs.

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Tina's status as a child with a disability raises another factor for consideration in regards to her possible attendance and discipline consequences at your school. In reviewing Tina's records from her previous school, you discover that the suspension affidavit provided by Annie was not totally accurate. While Tina was indeed receiving her special education services under her IEP at the end of the last school year, she still had twenty-five (25) days of a forty-five (45) day suspension to serve for her possession of marijuana and a firearm in the school parking lot.

While Tina's drug and weapon possession may have been identified as related to her disability by the manifestation review team, the IDEA does still allow for her suspension from school based upon the nature of her conduct. The district can immediately remove the student from school for up to 45 school days if a student 1) carries or possesses a weapon on school grounds or at a school activity, 2) knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while on school grounds or at a school activity, or 3) inflicts serious bodily injury upon another person while on school grounds or at a school activity. Tina's conduct obviously satisfies the conditions of these provisions and the remaining twenty-five (25) days of her suspension may be imposed at your district, if you determine that her conduct would have resulted in the same discipline in your district. Due to the serious nature of Tina's conduct, her 45-day suspension is authorized by the IDEA, but because the manifestation team determined her conduct to be related to her disability, 45 days is the maximum amount of time that Tina can be suspended.

Even though Tina is properly on suspension for another 25 days, your district still must provide Tina with her special education services for the next 25 days because the initial ten days of her suspension, when no FAPE obligation exists, have expired. After 25 days of providing special education services to Tina, she will likely rejoin your regular education environment, to the extent that she is able to do so in compliance with her IEP. Students like Tina exist and the circumstances and questions raised by her appearance in our state's school districts are becoming more common. While Tina has had a tough go of things for the past few years, the law dictates that your district has an obligation to provide most students with a free appropriate public education. Who knows, Tina's fortunes may be vastly different in your district due to your great leadership and of course, the invaluable legal advice you continue to receive from Guin Mundorf LLC.