

Book Policy Manual

Section Volume 37, No. 1 - November 2024

Title Revised Policy - Volume 37, No. 1 - November 2024 - DETERMINATION OF LEGAL SETTLEMENT AND ELIGIBILITY FOR ENROLLMENT OF STUDENTS WITHOUT LEGAL SETTLEMENT IN THE CORPORATION; PROOF OF INDIANA RESIDENCY

Code po5111

Status From Neola

Legal I.C. 20-18-2-11 (legal settlement defined)
I.C. 20-33-2 (compulsory school attendance)
I.C. 20-33-8-17 (expulsion for lack of legal settlement)
I.C. 20-26-11-1 (residence defined)
I.C. 20-26-11-2
I.C. 20-26-11-2.5 (divorced parent election)
I.C. 20-26-11-6(e) (option to not charge transfer tuition)
I.C. 20-26-11-6.5 (children of school employees)
I.C. 20-26-11-6.7 (nonpublic school students)
I.C. 20-26-11-32 (student transfer requests, HEA 1381 - 2013; SEA 108 - 2017)
I.C. 20-26-11-33 (non-transfer student attending alternative education program)
I.C. 20-33-8-19
Plyer v. Doe, 457 U.S. 202 (1982) (State Statute denying free public education to illegal immigrants violated the Equal Protection Clause of the Fourteenth Amendment)
Divorced Parents Agreement:
<http://www.doe.in.gov/sites/default/files/legal/formiiii.pdf>
Third Party Agreement:
<http://www.doe.in.gov/sites/default/files/legal/custodialstatementinstructions.pdf>

Cross References ag5111.01 - HOMELESS STUDENTS
po5605 - SUSPENSION AND EXPULSION OF STUDENTS WITH DISABILITIES
po5610 - SUSPENSION AND EXPULSION OF STUDENTS
po6250 - REQUIRED ADM COUNTS FOR THE PURPOSE OF STATE FUNDING AND VERIFICATION OF RESIDENCY FOR MEMBERSHIP

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Revised Policy - Volume 37, No. 1 - November 2024

5111 - DETERMINATION OF LEGAL SETTLEMENT AND ELIGIBILITY FOR ENROLLMENT OF STUDENTS WITHOUT LEGAL SETTLEMENT IN THE CORPORATION; PROOF OF INDIANA RESIDENCY

The School Board establishes the following policy for determining student eligibility to attend the schools of this School Corporation.

A. The Board will educate, tuition-free, students who have legal settlement in the Corporation, and students

- B. Where the legal settlement of a student cannot reasonably be determined by reference to the residence of the student's parent or legal guardian and the student is being supported by and living with a person whose residence is within the Corporation, the student may be enrolled without payment of tuition. ~~If the parents are able to support the student and have placed the student in the home of another person primarily for the purpose of attending school in this Corporation without establishing legal guardianship as required by Indiana law, tuition (-) will be charged. (-) will not be charged unless otherwise required by law. (-) may be charged according to Board Policy 6150. [END OF OPTION]~~

DRAFTING NOTE: Under the law, a corporation may charge tuition to some students, but not others. Choosing this option is NOT RECOMMENDED. All students should be treated the same to avoid claims of discrimination.]

[DRAFTING NOTE: Pursuant to guidance from the Indiana Department of Education, this would be categorized as a "Third Party Custodial Agreement," and documentation of that agreement must be maintained by the Corporation.]

- C. A child who is placed in foster care by a court of competent jurisdiction shall be admitted tuition-free, without regard to residency, to a school within the Corporation, as selected by the State Department of Human Services or the child placing agency responsible for the placement of that child.
- D. Foreign students participating in a foreign-exchange program approved by the Indiana State Board of Education and living with a resident host family will be admitted tuition-free.
- E. The Corporation will provide a free education to those students who are considered by Federal law to be illegal aliens, if the student's parent or legal guardian has legal settlement within the Corporation, or considered to be homeless by criteria established by the State (see Policy 5111.01 and AG 5111.01 - Homeless Students).
- F. If a student's legal settlement is changed after the student has begun attending school in the Corporation in any school year, the effective date of withdrawal from the Corporation may, at the election of the parent, the student (if the student is at least eighteen (18) years of age), or a juvenile court conducting a proceeding under I.C. 31-34-20-5, I.C. 31-34-21-10, I.C. 31-37-19-26, or I.C. 31-37-20-6 (or I.C. 31-6-4-18.5 before its repeal), be extended to the end of the semester in which the change of legal settlement occurred. At the discretion of the _____ **[name a school official, i.e., principal, Superintendent, etc.]**, the effective date of withdrawal from the Corporation may be extended to the end of that school year.

Students who have completed the eleventh grade in this Corporation and have changed legal settlement to another school corporation may complete the twelfth grade in this Corporation.

- G. The School Corporation shall maintain proof of Indiana residency for each student enrolled in the Corporation whom the Corporation counts for membership in the ADM count. This documentation of Indiana residency shall be placed in the student's electronic or hard copy file. (See also Policy 6250 - Required ADM Counts for the Purpose of State Funding and Verification of Residency for Membership.)

[DRAFTING NOTE: Choose one (1) of the following two options.]

[] [Option 1]

Transportation from and to the site of the new legal settlement will not be provided by the ~~School~~ Corporation for a student whose effective date of withdrawal is extended beyond the date of the change of legal settlement unless the student has an Individualized Education Program (IEP) in which transportation is required to be provided as a related service.

[] [Option 2]

Transportation from and to the new site of legal settlement will be provided by the ~~School~~ Corporation for a student whose effective date of withdrawal is extended beyond the date of the change of legal settlement.

[End of Options]

- H. A married student living with a spouse or a married or unmarried emancipated minor is eligible to attend school without payment of tuition if the student resides in the Corporation.

I. Children of Divorced Parents

Children of divorced parents may attend school in this Corporation without the payment of tuition if one (1) parent resides in this Corporation and an election is made utilizing the "Custodial Statement and Agreement: Divorce, Separation, or Abandonment" form provided by the Indiana State Board of Education.

The parent with physical custody of the student or the student, if the student is at least eighteen (18) years of age, must notify the Superintendent of the school corporation in which the parents/student seek to have the student enrolled of their election to enroll the student in the Corporation. The election shall be made on a yearly basis and applies throughout the school year unless the student's parent no longer resides within the attendance area of the Corporation.

J. A student who has been expelled from another school corporation or who is expelled from a nonpublic school or withdraws from a public or a nonpublic school to avoid expulsion may be enrolled in the Corporation in compliance with I.C. 20-33-8-20 during the actual or proposed expulsion if:

1. the student's parent informs the Corporation of the student's expulsion or withdrawal to avoid expulsion;
2. the Corporation consents to the student's enrollment; and
3. the student agrees to the terms and conditions of enrollment established by the Corporation.

~~Such students (-) will be charged (-) will not be charged unless otherwise required by law, (-) may be charged tuition according to Board Policy 6150 if they do not have legal settlement in the Corporation.~~ **[END OF OPTION]**

[DRAFTING NOTE: Under the law, a corporation may charge tuition to some students, but not others. Choosing this option is NOT RECOMMENDED. All students should be treated the same to avoid claims of discrimination.]

If a student's parent fails to inform the Corporation of the expulsion or withdrawal to avoid expulsion or the student fails to follow the terms and conditions established for enrollment, the Corporation may withdraw consent and prohibit the student's enrollment during the period of the actual or proposed expulsion. Before consent is withdrawn, the student must be given an opportunity for an informal meeting with the principal. At the informal meeting, the student is entitled to:

1. a written or verbal statement of the reasons for the withdrawal of consent;
2. a summary of the evidence against him/her; and
3. an opportunity to explain his/her conduct.

K. Students whose parents do not have legal settlement within the Corporation but who present evidence that they will move into the Corporation within a short period of time may enroll in the schools of this Corporation as tuition students for the time not in residence.

L. Students who do not have legal settlement may/will be enrolled in the special education program of this Corporation pursuant to the provisions of a Cooperative agreement. **[NOTE: Check with your Cooperative agreement.]**

M. Nonresident students may be accepted into the Summer School Program provided by this Corporation.

Transfer Students

[DRAFTING NOTE: CHOOSE ONE OF THE FOLLOWING OPTIONS:

[] Option #1

The Corporation shall enroll only those students who have legal settlement in the Corporation. The Corporation does not enroll students who do not have legal settlement as determined pursuant to I.C. 20-26-11 unless there was a policy in 2012-2013 school year that allowed students who do not have legal settlement to enroll in the Corporation. Those students, as well as students in the same household of a student who was enrolled in 2012-2013 whether or not that student attended a public school or accredited nonpublic school may enroll for the current year. The governing body of the Corporation may authorize the transfer of a student from an accredited nonpublic school or charter school to a school within the school corporation.

Transfer Student Whose Parent Is Employed by the Corporation:

The Corporation shall accept a transferring student who does not have legal settlement in the Corporation and whose parent is a current employee of the Corporation who resides in Indiana if: 1) the parent/employee earns an annual salary of at least: a) \$8,000; or b) \$3,000 earned due to being included an employee in the extracurricular portion of the Corporation's collective bargaining agreement; and 2) the Corporation has the capacity to accept the student. If the

number of students who request to transfer to the Corporation under this section causes the Corporation to exceed its maximum student capacity, the Board shall determine which students will be admitted as transfer students by a random drawing in a public meeting.

DRAFTING NOTE: YOU MUST SELECT THE FOLLOWING OPTION IF YOU DO NOT OPERATE MORE THAN ONE HIGH SCHOOL:]

[] Nonpublic School Transfer Student

The Corporation shall accept a transferring student who resides in Indiana and who does not have legal settlement in the Corporation if:

- A. the student attended an accredited nonpublic elementary school located in the attendance area of the Corporation for at least two (2) school years immediately preceding the school year in which the student transfers to a high school in the Corporation under this section;
- B. the student is transferring because the accredited nonpublic school from which the student is transferring does not offer grades nine (9) through twelve (12);
- C. the majority of the students in the same grade as the transferring student at the accredited nonpublic school have legal settlement in the Corporation and will attend a school under the authority of the Corporation; and
- D. the Corporation has the capacity to accept students.

If the number of students who request to transfer to the Corporation under this section causes the Corporation to exceed its maximum student capacity, the Board shall determine which students will be admitted as transfer students by a random drawing in a public meeting.

[END OF OPTION #1]

[] Option #2

In addition to students with legal settlement in the Corporation, students without legal settlement in the Corporation (hereinafter referred to as "transfer students") will be enrolled in compliance with I.C. 20-26-11-32 and the following procedure:

- A. By _____ **[insert date]**, the Board will establish the number of transfer students that can be accepted in each building and grade level.
- B. The Board will establish a date by which requests to enroll a transfer student must be submitted to the Superintendent. This date shall be submitted to the Indiana Department of Education and published on the Corporation Internet website.
- C. Requests to enroll a student without legal settlement in the Corporation shall not be denied if the student to be transferred:
 1. has been enrolled in the Corporation in the prior school year;
 2. is a member of a household in which any other member of the household is a student in the transferee school; or
 3. has a parent who is an employee of the Corporation who currently resides in Indiana and has a salary of at least \$8,000 or \$3,000 earned due to being included an employee in the extracurricular portion of the Corporation's collective bargaining agreement and the Corporation has the capacity to accept the student.
- D. If the number of requests to enroll in each building and grade level exceeds the number established by the Board reduced by the number of transfers that may not be denied as described in paragraph (C) above, the students to be enrolled in each building and grade level shall be determined by random selection in which each application submitted on or before the date established by the Board pursuant to paragraph (A) above has an equal chance of being selected.

Pursuant to State law, the Board may deny a student's application to transfer to the Corporation, discontinue enrollment of a transfer student currently attending, rescind approval of a student approved to attend in a subsequent year, or establish terms or conditions for enrollment or for continued enrollment in a subsequent school year, if:

2. exceeds the maximum number of students (12) months. The student has been suspended or expelled from

1. ten (10) or more school days;
2. possession of a firearm, deadly weapon, or a destructive device;
3. causing physical injury to a student, school employee, or visitor to the school; or
4. a violation of the Corporation's drug or alcohol rules.

B. the student has had a history of unexcused absences, and the Board believes that, based upon the location of the student's residence, attendance would be a problem for the student if the student is enrolled in the Corporation.

All due process procedures applicable to Corporation students who are subject to discipline, including the expulsion procedure in I.C. 20-33-8-19, apply to transfer students during the school year. (See Board Policy 5610 - Suspension and Expulsion of Students)

For purposes of computing the number of days of suspension of the student requesting enrollment, student discipline received from a teacher pursuant to I.C. 20-33-8-25(b)(7) and I.C. 20-26-11-32(j) shall be included in the calculation of the number of school days that a student has been suspended.

The Board delegates authority to the Superintendent to deny a student's application to transfer to the Corporation, discontinue enrollment of a transfer student currently attending, rescind approval of a student approved to attend in a subsequent year, or establish terms or conditions for enrollment or for continued enrollment in a subsequent school year if the student meets the criteria listed above.

Transportation will not be provided by the School Corporation for transfer students accepted for enrollment unless the transfer student has an Individualized Education Program (IEP) in which transportation is required to be provided as a related service.

No transfer student shall be accepted for enrollment for athletic reasons.

~~Transfer students (-) will be charged. (-) will not be charged unless otherwise required by law. (-) may be charged transfer tuition according to Board Policy 6150. [END OF OPTIONS]~~

~~[DRAFTING NOTE: Under the law, a corporation may charge tuition to some students, but not others. Choosing this option is NOT RECOMMENDED. All students should be treated the same to avoid claims of discrimination.]~~

[END OF OPTION #2]

[DRAFTING NOTE: The primary purpose of HEA 1381 (2013) is to end perceived "cherry-picking". This objective is expressed most succinctly by the addition of I.C. 20-26-11-32(g) which states: "(g) Except as provided in subsections (i), (j), and (k), the governing body of a school corporation may not deny a request for a student to transfer into the school corporation based upon the student's academic record, scores on statewide assessment program tests, disciplinary record, or disability, or upon any other factor not related to the school corporation's capacity."]

[OPTIONAL - Choose this option if the Corporation does not accept transfer students but wishes to accept a student who does not have legal settlement in the Corporation into an alternative education program operated by the Corporation]

Students Without Legal Settlement Attending Alternative Education Programs

Students without legal settlement in the Corporation may be accepted into an alternative education program operated by the Corporation even if the Corporation does not otherwise accept transfer students. The Board shall comply with I.C. 20-26-11-32(g), (h), (j), (k) and (l) with respect to those students.

I.C. 20-18-2-11 (legal settlement defined)

I.C. 20-33-2 (compulsory school attendance)

I.C. 20-33-8-17 (expulsion for lack of legal settlement)

I.C. 20-26-11-1 (residence defined)

I.C. 20-26-11-2

I.C. 20-26-11-2.5 (divorced parent election)

I.C. 20-26-11-6(e) (option to not charge transfer tuition)

I.C. 20-26-11-6.5 (children of school employees)

I.C. 20-26-11-6.7 (nonpublic school students)

I.C. 20-26-11-32 (student transfer requests; HEA 1381 - 2013; SEA 100 - 2017)

I.C. 20-33-8-19 (expulsion procedure; appeals; preparation of list)
I.C. 20-33-8-20 (maximum term of expulsion; enrollment in alternative program after expulsion or exclusion; reinstatement review)
I.C. 20-33-8-25 (additional disciplinary actions authorized)
I.C. 31-34-20-5 (determination and reporting of legal settlement of child)
I.C. 31-34-21-10 (review of child's legal settlement)
I.C. 31-37-19-26 (determination and reporting of legal settlement)
I.C. 31-37-20-7 (review of child's legal settlement)
Plyer v. Doe, 457 U.S. 202 (1982) (State Statute denying free public education to illegal immigrants violated the Equal Protection Clause of the Fourteenth Amendment)
Divorced Parents Agreement: <https://www.in.gov/doi/files/custodial-form-ii-2017.pdf>
~~Divorced Parents Agreement: <http://www.doe.in.gov/sites/default/files/legal/formiii.pdf>~~
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Cross References

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po5605 - SUSPENSION AND EXPULSION OF STUDENTS WITH DISABILITIES
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po6250 - REQUIRED ADM COUNTS FOR THE PURPOSE OF STATE FUNDING AND VERIFICATION OF RESIDENCY FOR MEMBERSHIP