



OFFICE OF THE
SECRETARY
2017 JAN -3 PM 3:20

MURIEL BOWSER
MAYOR

JAN - 3 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue N.W., Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for the consideration and approval by the Council of the District of Columbia is a resolution titled "Student Residency Verification and Investigations Approval Resolution of 2017" pursuant to sections 11 and 16 of the District of Columbia Nonresident Tuition Act, approved September 8, 1960 (74 Stat. 853; D.C. Official Code § 38-308(a) and 38-313 (2012 Repl.)). This resolution would approve the proposed rulemaking adopted by the Office of the State Superintendent of Education set forth in chapter A-50 in Title 5 of the D.C. Municipal Regulations.

The purpose of this proposed rulemaking is to clarify the policies and procedures required to ensure District residents have access to available space at local schools, and that when extra space is available, non-resident students are permitted to enroll in a public school if they pay non-resident tuition. Through this proposed rulemaking, the Office of the State Superintendent of Education seeks to reduce burdens and lift barriers for both local education agencies and families in the residency verification process.

Please feel free to contact Shana Young, Chief of Staff (OSSE), at (202) 322-1734, to discuss any questions you may have regarding this report. I urge the Council to take favorable consideration of the enclosed resolution.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser".
Muriel Bowser


Chairman Phil Mendelson
at the request of the Mayor

A RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve proposed rules adopted by the Office of the State Superintendent of Education which amends chapter A-50 of Title 5 of the District of Columbia Municipal Regulations (DCMR) entitled "Student Residency", by adding and amending sections 5000 through 5014 to establish procedures for residency verification and non-resident investigations for all students attending District of Columbia public schools and public charter schools in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Student Residency Verification and Investigations Approval Resolution of 2017".

Sec. 2. Pursuant to section 16 of the District of Columbia Nonresident Tuition Act of 1960, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code §38-313); the Council approves the proposed rulemaking adopted by Office of the State Superintendent of Education that amends current rules to clarify the policies and procedures required to ensure District residents have access to available space at local schools, and that when extra space is available, non-resident students are permitted to enroll in a public school pay non-resident tuition, as set forth in sections 5000 through 5014 of Chapter 50 in Title 5-A (DCMR).

Sec. 3. Fiscal impact.

1 The Council adopts the fiscal impact statement in the committee report as the fiscal
2 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
3 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

4 Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption, to the
5 Mayor, the Superintendent of the Office of the State Superintendent of Education, and the
6 Administrator of the Office of Documents and Administrative Issuances.

7 Sec. 5. This resolution shall take effect immediately.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: Lolita S. Alston
Deputy Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: December 9, 2016

SUBJECT: Legal Sufficiency Review of Draft Resolution, "Student Residency
Verification and Investigations Approval Resolution of 2017"
(AR- 16-682-B)

This is to Certify that this Office has reviewed the above-referenced draft resolution and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

Janet M. Robins

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education (“State Superintendent”), pursuant to section 3(b)(3) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(3) (2012 Repl. and 2016 Supp.)); sections 11 and 16 of the District of Columbia Nonresident Tuition Act, approved September 8, 1960 (74 Stat. 853; D.C. Official Code § 38-308(a) and 38-313 (2012 Repl.)); and Mayor’s Order 2016-___; section 101(d) of the Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-348; D.C. Official Code § 38-2906.02(c) (2012 Repl. and 2016 Supp.)); and the District of Columbia Public Schools and Public Charter School Student Residency Fraud Prevention Amendment Act of 2012, effective May 9, 2012 (D.C. Law 19-126; D.C. Official Code § 38-312.01(c) (2012 Repl. and 2016 Supp.)), hereby gives notice of her intention to adopt the following proposed amendments to Chapter 50 (Residency Verification for Public Schools and Public Charter Schools) of Subtitle A (Office of the State Superintendent of Education), Title 5 (Education), of the District of Columbia Municipal Regulations (“DCMR”) and delete in their entirety subsections 2000.2, 2000.4, 2000.5, 2002.11, 2002.15, 2002.16, sections 2006-2009, and section 2099 in Chapter 20 (Admissions of Students) of Subtitle E (Original Title 5), Title 5 (Education) of the DCMR.

The Office of the State Superintendent of Education (OSSE), pursuant to section 3(b)(3) of the State Education Office Establishment Act of 2000 (D.C. Official Code § 38-2602(b)(3) (2012 Repl. and 2016 Supp.)), is responsible for establishing the rules for the verification of District residency for public and public charter school students, with the approval of the State Board of Education (SBOE), pursuant to section 403(a)(10) of the Public Education and Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code §§ 38-2652(a)(10) (2012 Repl. and 2016 Supp.)). The purpose of this proposed rulemaking is to clarify the policies and procedures required to ensure District residents have access to available space at local schools, and that when extra space is available, non-resident students are permitted to enroll in a public school if they pay non-resident tuition. Through this proposed rulemaking, the Office of the State Superintendent of Education (“OSSE”) seeks to reduce burdens and lift barriers for both local education agencies and families in the residency verification process. Given, however, that universal pre-Kindergarten (pre-K) is not offered in neighboring jurisdictions, provisions to reduce burden for parents of school age children are not provided to parents of pre-K students.

In developing the proposed regulations, OSSE engaged in an extensive period of public engagement and solicitation of public comments. An Advanced Notice of Proposed Rulemaking (ANPR), along with a memorandum describing the ANPR and responses to frequently asked questions, was published on OSSE’s website for a forty-five (45) day public comment period on September 8, 2016. During the public comment period, OSSE held one engagement session for the public and two engagement sessions for Local Education Associations. In addition, the SBOE held working sessions on October 5, 2016 and November 2, 2016 and public hearings on October 26, 2016 to discuss the ANPR and receive public testimony. The comment period

officially closed on October 26 2016, with OSSE having received numerous comments from advocates and members of the regulated community.

OSSE greatly appreciates the many comments that the public submitted throughout the process. OSSE has carefully considered all of the comments and made changes accordingly. A chart with all the comments received and OSSE's responses to the comments are available on OSSE's website.

This notice is being circulated throughout the District for a thirty (30) day notice and comment period. Information about how to submit written comments is set forth at the end of these proposed rules.

Chapter 50 (Residency Verification for Public Schools and Public Charter Schools) of Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 50 STUDENT RESIDENCY

5000 GENERAL PROVISIONS

- 5000.1 The purpose of this Chapter is to establish procedures for residency verification and non-resident investigation for all students attending District of Columbia Public Schools ("DCPS") and public charter schools in the District.
- 5000.2 The review of all contested residency cases within DCPS and public charter schools, the promulgation of procedures for residency verification, and the enforcement of residency and tuition payment requirements shall be the sole and exclusive responsibility of the Office of the State Superintendent of Education ("OSSE"), or its designee, as provided in these regulations, effective October 1, 2017.
- 5000.3 Policies and procedures related to residency verification and enrollment shall be available to the public and shall be posted on OSSE and local education agency ("LEA") websites.
- 5000.4 Residency verification and non-resident investigation policies and practices of an LEA or school shall not create barriers to the identification of, or enrollment of, attendance, or success in school of students experiencing homelessness, undocumented students.

5001 ESTABLISHING STUDENT RESIDENCY

- 5001.1 All pre-K age and school aged children or eligible adult students who establish bona fide residency in the District of Columbia, may attend a District of Columbia public school or District of Columbia public charter school (collectively a

“District public school”), a publicly funded pre-Kindergarten (“pre-K”) program in a community-based organization, or other school or educational program with funding provided by the District of Columbia, free of charge.

5001.2 A resident student shall have priority over a non-resident student seeking admission to a District public school, or other school or educational program with funding provided by the District of Columbia.

5001.3 In the absence of evidence to the contrary, residency for students under eighteen (18) years of age and not emancipated shall be presumed to be the bona fide residence of the student’s parents, guardian, custodian or other primary caregiver, as defined in this chapter.

5001.4 For the purposes of Sections 5001 to 5005, adult students, self-supporting or the parents, guardians, custodians, or other primary caregiver of a minor student shall be referred to as the person seeking to enroll the student.

5001.5 The District of Columbia is the bona fide residence of the person seeking to enroll the student if:

- (a) The person has established a physical presence in the District of Columbia; and
- (b) The person has submitted valid and proper documentation in accordance with subsections 5004.2 or 5004.3.

5001.6 In the event the student’s parents do not maintain the same residency and do not have a formal custodial agreement entered into by a court of competent jurisdiction, the student shall be presumed to be a resident, if one of the parents has established bona fide residency in the District.

5001.7 In the event the student’s parents do not maintain the same residency but do have a formal custodial agreement entered into by a court of competent jurisdiction awarding physical custody and legal custody to one or both parents, the student shall be presumed to be a resident, if:

- (a) The student’s parents share joint physical custody and joint legal custody of the student and at least one parent has established bona fide residency in the District;
- (b) The student’s parents share joint physical custody even if only one parent is awarded sole legal custody and the parent awarded sole legal custody has not established bona fide residency in the District but the parent not awarded legal custody has established bona fide residency in the District;

- (c) The parent awarded sole physical custody and sole legal custody has established bona fide residency in the District; or
- (d) The student's parents share joint legal custody even if only one parent is awarded sole physical custody and the parent awarded sole physical custody has not established bona fide residency in the District but the parent not awarded physical custody has established bona fide residency in the District.

5001.8 A student experiencing homelessness is not required to establish residency as a condition of enrollment in a District public school. The appropriate school official shall notify OSSE when a student is experiencing homelessness or may be suspected of experiencing homelessness and shall work with OSSE, as appropriate, to ensure proper identification and promptly provide the student with the available services and assistance required by the McKinney-Vento Act, and provide notice of the student's educational rights.

5001.9 An undocumented student is not required to provide proof of immigration status as a condition of enrollment in a District public school. The residency of an undocumented student, who is eligible for admission to a DCPS or public charter school, is established in accordance with Subsection 5004.7.

5001.10 The residency of a ward of the District of Columbia, who is eligible for admission to a DCPS or public charter school, is established in accordance with Subsection 5004.8.

5001.11 The residence of an adult student, who is eligible for admission to a DCPS or public charter school, is not the residence of the adult student's parents, custodian, guardian or other primary caregiver, unless the adult student establishes residency in accordance with Subsection 5004.9.

5001.12 The residency of a child of a minor parent, who is eligible for admission to a DCPS or public charter school, is established in accordance with Subsection 5004.10.

5002 STUDENT RESIDENCY VERIFICATION

5002.1 The residency of each student seeking to attend a District public school or receiving funding from the District of Columbia to attend another school or educational program shall be verified consistent with this chapter, and as described below:

- (a) Upon initial enrollment, the person seeking to enroll the student shall establish residency in the District of Columbia, including an acknowledgement confirming responsibility for tuition payment for any

period of time the student is determined to be a non-resident while enrolled and attending a District public school;

- (b) Each student attending a District public school or receiving funding from the District of Columbia to attend another school or educational program shall establish residency annually; and
- (c) The current LEA of enrollment shall verify each student's residency annually.

5002.2 Except as provided in subsection 5002.3, annual residency verification of a student's bona fide residence by the current LEA of enrollment shall include:

- (a) Completion of a residency verification form provided by OSSE;
- (b) Submission and review of documentation demonstrating physical and legal presence to establish District residency as provided in either subsections 5004.2 or 5004.3; and
- (c) Submission and review of other primary caregiver documentation, as required.

5002.3 Annual residency verification of a school age student, as defined in this Chapter, whose bona fide residence was verified by the current LEA of enrollment in a prior school year and who maintains bona fide residence in the District of Columbia, may be limited to the submission of a residency verification form, as provided by OSSE and completed by the person seeking to enroll the student, which shall include the following:

- (a) Written confirmation that affirms that student's bona fide residence in the District has remained the same;
- (b) Appointment of OSSE, or another specifically designated District agency identified by OSSE, such as the Office of Tax and Revenue, as the representative authorized to verify student's residency status through an interagency data-sharing process; and
- (c) Consent to random verification of student's residency status through an interagency data-sharing process.

5002.4 Even if annual residency verification is completed pursuant to 5002.3, OSSE may, if it concludes that additional information is needed, seek further documentation to verify the student's residency or otherwise investigate the residency status of the student.

- 5002.5 Even if annual residency verification is completed pursuant to 5002.3, school official(s), if they reasonably conclude that additional information is needed, seek further documentation to verify the student's residency or otherwise investigate the residency status of the student.
- 5002.6 An adult student, self-supporting student, or parent(s), guardian(s), custodian(s) or other primary caregiver of a minor student attending a District public school or receiving funding from the District of Columbia to attend another school or educational program shall re-establish residency in the District if the student's address of residency changes after October 5 of the school year and the current LEA of enrollment has completed the student's annual residency verification.
- 5002.7 A LEA shall verify District residency of a student who is funded to attend a school or educational program outside the District of Columbia public school system annually and as necessary, in accordance with this Chapter. Nothing in this subsection shall prevent the placement of a student during the pendency of the residency verification.
- 5002.8 The residency of a student who attends a school or educational program other than a public school in the District of Columbia and whose tuition is paid by the District of Columbia, shall be verified in conformance with the procedures set forth in this chapter.
- 5002.9 At the time a student transfers from a District public school to another District public school, the receiving LEA shall be responsible for verifying residency and collecting the residency verification documents from the sending LEA, or from the student, student's parents, guardian, custodian or other primary caregiver directly if residency verification documentation submitted is not available from the sending LEA. The receiving LEA shall maintain the student's residency verification documentation.
- 5002.10 A student shall be permitted to attend and remain enrolled in a school while his or her residency verification status is pending.

5003 STUDENT RESIDENCY VERIFICATION: TIMING

- 5003.1 The residency of each student enrolled in a District public school shall be verified by the current LEA of enrollment, or its designee, not earlier than the date results of the District's Common Lottery system are released and not later than October 5th, or ten (10) days of initial enrollment, whichever is later, for the school year that begins on or after July 1st of each year.
- 5003.2 An LEA may require students to submit residency verification prior to OSSE's October 5th deadline, but not later than OSSE's October 5th deadline, unless the student has enrolled in the school after October 5th, in which case the student shall submit residency verification within ten (10) days of initial enrollment.

5003.3 OSSE, or its designee, may investigate the residency status of a student or take other steps to verify the student's residency status if student fails to provide adequate documentation to establish residency by October 5th of the current school year or (10) days following enrollment, whichever is later.

5003.4 A student matched to the LEA through the Common Lottery system shall establish residency in the District of Columbia by the deadline set by the Common Lottery system for the school year that begins on or after July 1st of that same year. If the person enrolling the student is not able to establish residency by the LEA's initial enrollment deadline, the LEA may consider the student's space forfeited.

5004 STUDENT RESIDENCY VERIFICATION: METHODS

5004.1 A person seeking to enroll the student shall provide documentation in compliance with this Chapter and all relevant District of Columbia laws in order to establish residency.

5004.2 One (1) of the following items shall demonstrate both physical presence and legal presence to establish District residency for the purposes of this chapter:

- (a) Proof of payment of District personal income tax, in the name of the person seeking to enroll the student, for the tax period closest in time to the consideration of District residency;
- (b) A pay stub issued less than 45 days prior to consideration of residency in the name of the person seeking to enroll the student that shows his or her District residency and evidence of the withholding of District income tax;
- (c) Current official documentation of financial assistance received by the person seeking to enroll the student, from the District Government including, but not limited to Temporary Assistance for Needy Families (TANF), Medicaid, the State Child Health Insurance Program (SCHIP), Supplemental Security Income (SSI), housing assistance, or other governmental programs;
- (d) Confirmation, based upon completion and submission of a tax information authorization waiver form, by the District Office of Finance and Revenue of payment of District income taxes by the person seeking to enroll the student;
- (e) Current official military housing orders showing residency in the District of the person seeking to enroll the student; or

- (f) A currently valid court order indicating that the student is a ward of the District.

5004.3 If person enrolling the student is unable to provide one (1) of the items in subsection 5004.2, the person enrolling the student shall provide two (2) of the following items to demonstrate both physical presence and legal presence to establish residency in the District:

- (a) A current motor vehicle registration in the name of the person seeking to enroll the student and evidencing District residency;
- (b) A valid unexpired lease or rental agreement in the name of the person seeking to enroll the student, and paid receipts or canceled checks (for a period within 2 months immediately preceding consideration of residency) for payment of rent on a District residence in which the student actually resides;
- (c) A valid unexpired District motor vehicle operator's permit or other official non-driver identification in the name of the person seeking to enroll the student; and
- (d) Utility bills (excluding telephone bills) and paid receipts or cancelled checks (from a period within the 2 months immediately preceding consideration of residency) in the name of the person seeking to enroll the student that show a District residence address.
- (e) An LEA shall not accept any other documentation to establish or verify residency from a person seeking to enroll the student, unless except as authorized under procedures approved by OSSE pursuant to D.C. Official Code § 38-311 or any superseding statute.

5004.4 Documentation to establish residency may be presented in the following manner:

- (a) Provided to the school principal or his or her designee by the person seeking to enroll the student, in person or by that person's appointed representative;
- (b) Subject to implementation of an interagency data sharing process, pursuant to such a process with the consent of the person seeking to enroll the student; or
- (c) Pursuant to other District-wide policies or procedures approved by OSSE.

5004.5 The principal or the principal's designated employee may conduct a home visit to determine residency of the person seeking to enroll the student if:

- (a) The person seeking to enroll the student is unable to produce the documentation to establish District residency as required in subsections 5004.2 or 5004.3; and
- (b) The person seeking to enroll the student provides written consent in a manner approved by OSSE.

5004.6 A home visit to determine residency shall be limited to obtaining evidence that verifies the person seeking to enroll the student and the student reside at the District address.

5004.7 An undocumented student may establish residency through one of the following:

- (a) Documentation as required under subsections 5004.2, 5004.3, or 5005.3 that is in the name of the undocumented student's parent(s), custodian, guardian or other primary caregiver;
- (b) A home visit pursuant to 5004.5; or
- (c) OSSE's McKinney-Vento Act documentation if the student is an unaccompanied student.

5004.8 A ward of the District of Columbia, including a foster child, may establish residency through one of the following:

- (a) Documentation as required under subsections 5004.2, 5004.3, or 5005.3 that is in the name of the ward's parent(s), custodian, guardian or other primary caregiver;
- (b) A home visit pursuant to 5004.5; or
- (c) A court order or official documentation from the District's Child and Family Services Agency providing that the child is a ward of the District of Columbia.

5004.9 An adult student may establish residency at the residence of his or her parent(s), custodian, guardian or other primary caregiver through one of the following:

- (a) Documentation as required under subsections 5004.2, 5004.3, or 5005.3 that is in the name of the adult student or his or her parent(s), custodian, guardian or other primary caregiver;
- (b) A home visit pursuant to 5004.5; or

- (c) A signed statement, sworn under penalty of perjury, that an individual is the parent, custodian, guardian or other primary caregiver of the adult student and the adult student resides with him or her.

5004.10 A minor parent seeking to enroll a child may establish District residency of the child at the residence minor parent's parent(s), custodian, guardian or other primary caregiver through one of the following:

- (a) Documentation as required under subsections 5004.2, 5004.3, or 5005.3 that is in the name of the minor parent or his or her parent(s), custodian, guardian or other primary caregiver;
- (b) A home visit pursuant to 5004.5; or
- (c) A signed statement, sworn under penalty of perjury, that an individual is the parent, custodian, guardian or other primary caregiver of the minor parent and the minor parent resides with him or her.

5004.11 A student living on embassy property in the District of Columbia shall establish residency in the District of Columbia through one of the following:

- (a) Documentation as required under subsections 5004.2, 5004.3, or 5005.3 that is in the name of the student or his or her parent(s), custodian, guardian or other primary caregiver;
- (b) A home visit pursuant to 5004.5; or
- (c) A dated statement, signed by an appropriate embassy official and including the official embassy seal, issued within the twelve (12) month period before the date of the statement, stating the name of the person seeking to enroll the student and stating that the person (i) currently lives on embassy property in the District of Columbia or (ii) will reside on that embassy property, and that the embassy will confirm this during the relevant school year.

5004.12 A self-supporting student seeking to enroll his or her self may establish District residency through one of the following:

- (a) Documentation as required under subsections 5004.2, 5004.3, or 5005.3 that is in the name of the self-supporting student;
- (b) A home visit pursuant to 5004.5; or
- (c) A court order or official documentation providing that the minor student who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.

5005 STUDENT RESIDENCY VERIFICATION: OTHER PRIMARY CAREGIVER

- 5005.1 In addition to establishing his or her residency status, a primary caregiver, other than the student's parent, guardian or custodian, seeking to enroll a student in a District public school shall provide documentation that establishes his or her status as the student's other primary caregiver.
- 5005.2 A minor student's residency may be based upon that of an other primary caregiver if:
- (a) The student resides with the other primary caregiver;
 - (b) The other primary caregiver provides both (1) care or control; and (2) substantial support, for the student; and
 - (c) The student's parents, guardians, or custodians have abandoned the child; or
 - (d) The student's parents, guardians, or custodians are unable to provide both care or control, and substantial support due to adverse consequences such as serious family hardship.
- 5005.3 The status as an other primary caregiver of each person seeking to enroll a student in a school shall be established through one of the following:
- (a) Previous school records indicating that the student is in the care of the caregiver;
 - (b) Immunization or medical records indicating that the student is in the care of the caregiver;
 - (c) Proof that the caregiver receives public or medical benefits on behalf of the student;
 - (d) A signed statement, sworn under penalty of perjury, that he or she is the primary caregiver for the student; or
 - (e) An attestation from a legal, medical or social service professional attesting to the caregiver's status relevant to the student.
- 5005.4 Documentation to establish or verify the status of other primary caregiver pursuant to subsection 5005.3(d) or 5005.3(e) shall be in the form provided by OSSE.

5005.5 An LEA shall not accept any other documentation to establish or verify the status of other primary caregiver from a person seeking to enroll the student, unless approved by OSSE pursuant to D.C. Official Code § 38-311, or any superseding statute.

5005.6 Notwithstanding subsection 5005.3, in limited exceptional circumstances, OSSE may determine that a child is a resident upon the written request of an LEA or person seeking to enroll a student, pursuant to D.C. Official Code § 38-302(d), if OSSE finds:

(a) That the care or control and the substantial support are supplied by the person or persons with whom a child is residing and the parent, guardian or custodian of such child is unable to supply such care or control and substantial support; or

(b) That such child is self-supporting.

5006 STUDENT RESIDENCY VERIFICATION: MONITORING

5006.1 OSSE may monitor a District public school to ensure proper verification of student residency. OSSE's monitoring may include scheduled and unscheduled visits to the District public school or local education agency.

5006.2 A District public school shall fully cooperate with authorized representatives of the Government of the District of Columbia, including OSSE, during a monitoring visit and shall provide them access to facilities, staff, records, and other information related to the verification of student residency, upon request.

5007 NON-RESIDENT STUDENTS

5007.1 A non-resident student enrolled in a District public school shall pay non-resident tuition consistent with provisions of this chapter.

5007.2 An LEA may enroll a non-resident student after a determination is made by the LEA that space is available at a District public school because no qualified District resident is seeking admittance during the same period of time for the same grade at the relevant school location.

5007.3 Current non-resident students who have been approved to attend a District public school may remain until the terminal grade of that school without re-application if:

(a) The current non-resident student has paid in full the total non-resident tuition by July 15 of each school year that the non-resident student has been in attendance; and

- (b) The current non-resident student's initial enrollment in the school was in accordance with all applicable policies, regulations and laws, and not based on false or fraudulent information.

5007.4 Upon completion of a terminal grade of a school, current non-resident students who have been approved to attend a District public school are not guaranteed a space at a feeder or other District public school for the following grade. All non-resident students who wish to attend a feeder or other District public school for the following grade shall apply to enroll in the feeder or other District public school.

5007.5 The following categories of non-resident students may be approved to attend a District public school even though the school is not otherwise open to non-resident students (subject to their payment non-resident tuition) in order to provide for continuity of instruction:

- (a) A student who is enrolled and attending the final grade level of a school who becomes a non-resident student during that school year; and
- (b) A student who would have re-enrolled in the final grade level of a school in September, but who became a non-resident student during the school year or summer prior to that final grade year.

5007.6 A ward of the District of Columbia who is no longer a ward because he or she was permanently placed in a permanent care and custody outside of the District shall be approved to attend the District public school that he or she attended before being permanent placed, until the terminal grade of that school and is not required to pay non-resident tuition.

5007.7 Except for those non-resident students covered under Section 5007.3, 5007.5, and 5007.6 all non-resident students who wish to continue to attend a District public school shall reapply to the school each year and the LEA shall determine each year whether space is available and whether the student may attend as provided for in this section.

5007.8 Upon request, the head of an LEA, a principal of a school, or the designee of any of them, shall provide to OSSE, or its designee, all waiting lists that were in effect or established during the time period(s) that a non-resident student attended or was enrolled at its school or campus.

5007.9 A non-resident student attending a District public school shall be officially enrolled at the school and reported on the school's roster as a non-resident student.

5008 NON-RESIDENT STUDENTS: INVESTIGATIONS

- 5008.1 Upon request, the head of an LEA, a principal of a school, or his or her designee shall provide to OSSE, or its designee, any and all documentation necessary to facilitate non-residency investigations within five (5) business days.
- 5008.2 OSSE, or its designee, may investigate the residency status of a student or take other steps to verify the student's residency status if the student fails to provide adequate documentation to establish residency by October 5 of the current school year or (10) days following enrollment, whichever is later.
- 5008.3 Proof of District residency which appears to be satisfactory does not prevent OSSE or school officials, with reasonable basis, from seeking further information to verify the student's residency or the other primary caregiver status of the adult enrolling the student; nor does it prevent OSSE, or its designee, from investigating the residency of the student or the residency or other primary caregiver status of the adult.
- 5008.4 Upon request, the person seeking to enroll a student shall provide to OSSE or an appropriate school official, or the designee of either, documentation to establish residency in accordance with the requirements set forth in Section 5004 or any other documentation necessary to facilitate non-residency investigations within ten (10) days of the request.
- 5008.5 OSSE or its designee shall investigate allegations of non-residency and summarize the results of the investigation in a written report within a reasonable timeframe.
- 5008.6 OSSE shall make the results of an investigation available to the LEA, the person seeking to enroll the student, the District of Columbia Office of the Inspector General and the District of Columbia Office of the Attorney General, upon request.

5009 NON-RESIDENT STUDENTS: FINDING OF NON-RESIDENCY AND NOTIFICATION

- 5009.1 Based on the information gathered from an investigation, the residency verification process or otherwise, OSSE may issue a finding that a student is not a resident of the District of Columbia.
- 5009.2 When OSSE issues a finding that a student is not a resident of the District of Columbia, OSSE shall provide the adult student, the self-supporting student, or the parent, guardian, custodian or other primary caregiver of the minor student written notification of the finding and an opportunity for review as specified in this chapter. The written notification shall be delivered by OSSE through the following methods:

- (a) By mail to the last known home, work or school address on file with the LEA for the student and to the out-of-District address of record, if any; and
- (b) By email, to the last known e-mail address of the person seeking to enroll the student, if known to OSSE.

5009.3 The written notification shall:

- (a) Include the basis for finding that the student is a non-resident;
- (b) Notify the student or student's parent, guardian, custodian or other primary caregiver that they have ten (10) business days from the date the written notification is issued to request an administrative review of the non-residency finding by an impartial party or office assigned by OSSE to review such matters and render a final decision;
- (c) Explain that the student may remain enrolled at that he or she is attending school until a final administrative decision is made;
- (d) Explain that unless OSSE receives a request for administrative review of the non-residency finding within ten (10) business days after the date of the written notification, the non-resident finding will become the final administrative decision, the student will be disenrolled from school, and tuition will be owed for period of time in which the student was enrolled but was not a District resident; and
- (e) State that if the student is voluntarily or involuntarily disenrolled from school before a final decision is made that the student was or is in fact not a District resident, the District shall calculate the a pro-rated amount of non-resident tuition owed, reflecting the student's time at the school while he or she was a non-resident, how and by when payment should be made, and that OSSE may take any authorized action to collect this amount.

5010 NON-RESIDENT STUDENTS: ADMINISTRATIVE REVIEW OF CONTESTED RESIDENCY CASE AND FINAL DECISION

5010.1 Requests for an administrative review of an OSSE non-resident finding shall be filed with OSSE not later than ten (10) business days after the date the written notification of the non-resident finding is issued. If a request for review is not received within a timely manner, and no corrective actions are confirmed to have been taken on behalf of the student, the finding of non-residency, and the proposed decisions to disenroll the student from school and assess tuition, shall become the final administrative decision of the agency.

- 5010.2 OSSE shall refer a request for review of a contested residency case to an impartial hearing officer or administrative review office for a final administrative decision. Any hearing shall be conducted pursuant to section 10 of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-509 (2016 Supp.)).
- 5010.3 OSSE shall refer a request for review of a contested residency case to the designated hearing officer or administrative review office by filing a copy of the request for review that it received, along with a statement that OSSE requests the hearing officer or administrative review office to hear and decide the case.
- 5010.4 In all contested residency cases, the hearing officer or administrative review office assigned to hear the case shall set the hearing date and issue the hearing notice.
- 5010.5 The presiding hearing officer or Administrative Law Judge shall issue a final decision in all contested residency cases assigned to him or her. The hearing officer or Administrative Law Judge's final decision shall be in writing and shall be the final administrative decision of OSSE. The statement of appeal rights required by Section 5011 shall be attached to or included in the written final administrative decision.
- 5010.6 In contested residency cases, the adult student, self-supporting student, or ward, or the parent, custodian, or guardian of the minor student who is claiming District of Columbia residency has the burden of proving residency status for the purpose of establishing whether the student may enroll in and attend a District public school tuition-free.
- 5010.7 The presiding hearing officer or Administrative Law Judge shall be governed by the Office of Administrative Hearings Rules at 1 DCMR §§ 2905-2909, that are used in DCPS residency cases to address procedural issues, to the extent possible and as appropriate to encourage consistency across District public schools in the residency verification process. Where the Office of Administrative Hearings ("OAH") rules for DCPS residency cases do not address a procedural issue, the hearing officer or Administrative Law Judge shall be guided by the OAH Rules of Practice and Procedure. Where the OAH Rules of Practice and Procedure do not address a procedural issue, the hearing officer or Administrative Law Judge shall be guided by the District of Columbia Superior Court Rules of Civil Procedure to decide the issue.
- 5010.8 The office assigned by OSSE to hear contested residency cases may establish written standard operating procedures to guide parties in contested residency cases through the process of an administrative review before a hearing officer.

5010.9 In all contested residency cases, the currently enrolled student shall be allowed to continue to attend school without prepayment of tuition, pending the final administrative decision.

5011 NON-RESIDENT STUDENTS: APPEAL RIGHTS

5011.1 Every appealable decision issued by a hearing officer or Administrative Law Judge in a contested residency case shall include a statement of the appeal rights described in this section.

5011.2 A party to a contested residency case who is aggrieved by a decision of the hearing officer or Administrative Law Judge assigned to his or her case has 30 calendar days from the date the decision was issued to file an appeal to the D.C. Court of Appeals.

5011.3 The filing of an appeal or a petition for review will not automatically stay (or delay) the date a final decision goes into effect.

5011.4 Any party may file a motion to stay a final decision pending appeal. Any party may file a motion to stay the effective date of a final decision that has been issued. A motion for a stay shall include the reasons for granting the stay.

5011.5 In determining whether to grant a stay, the hearing officer or Administrative Law Judge may consider the following factors: whether the party filing the motion is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

5012 NON-RESIDENT STUDENTS: ACTION UPON FINAL DECISION

5012.1 OSSE shall provide notice of a final administrative decision in a matter involving non-residency to the LEA.

5012.2 Upon receiving notice from OSSE that a final administrative decision has been made that a student is a non-resident and an appeal of the final administrative determination has not been timely requested, the LEA shall:

- (a) Update the student records to reflect his or her appropriate residency, tuition, and enrollment status, including the following systems as appropriate: the LEA data systems; state level reporting and data systems including without limitation, the Student Longitudinal Educational Data system and the Specialized Education Data System; and Public Charter School Board data system;

- (b) Notify OSSE if the student voluntarily or involuntarily un-enrolls from the school, so that the District may take action, including legal action, to collect tuition owed; and
- (c) Ensure that any action requiring withdrawal of a non-resident student with an Individual Education Program shall be consistent with the requirements of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* and other applicable federal and local laws and regulations.

5012.3 A matter involving non-residency shall be referred by OSSE to the Office of the Attorney General and may be referred to the Office of Inspector General for appropriate legal action if there is evidence that an individual knowingly supplied false information in connection to residency verification.

5013 NON-RESIDENT STUDENTS: TUITION PAYMENTS

5013.1 Adult non-resident students or the parents, guardians, custodians or other primary caregiver of a minor non-resident student attending a District funded school shall be subject to and responsible for non-resident tuition payments consistent with this chapter.

5013.2 Non-resident tuition payments shall be made payable to “*D.C. Treasurer*” and delivered to OSSE in a timely manner in accordance with OSSE’s tuition collection process or policy, or the applicable tuition payment agreement if one exists. OSSE shall provide the responsible individual with confirmation that it has received the non-resident tuition payments.

5013.3 If the tuition payment of a current non-resident student who has been approved to attend a District public school is delinquent for a period of ninety (90) days or more, OSSE may exclude the non-resident student from attending a District public school based on non-payment.

5013.4 In the event a District public school has already received Uniform Per Student Funding Formula (“UPSFF”) funding for a student found to be as a non-resident, the District may withhold a portion of the school’s subsequent funding, equal to the amount of UPSFF funding previously distributed to the LEA for the student found as a non-resident.

5013.5 All agreements regarding the tuition payment for the non-resident student shall be in writing.

5013.6 A LEA shall maintain in a student’s permanent file, tuition payment agreement and a written record of tuition payments, if available, to be made available during the annual enrollment audit and upon request by OSSE, or another government agency, for each non-resident student.

5013.7 A matter involving tuition payments for non-residents may be referred by OSSE to the Office of the Attorney General for collection of tuition payments.

5014 NON-RESIDENT STUDENTS: TUITION RATES

5014.1 OSSE shall establish non-resident tuition rate determinations that reflect the amount necessary to cover all expenses incurred by the District public school as a result of the student's use of the school's services or the amount paid by the District of Columbia to fund the student's services received at a school or educational program with funding provided by the District of Columbia.

5014.2 Non-resident tuition rate determinations shall include the UPSFF amount, which includes all relevant weights associated with the UPSFF, the per pupil facilities allowance for public charter schools or other OSSE approved allowances as appropriate, and any other supplemental allocations.

5014.3 OSSE may establish non-resident tuition rate determinations that exceed the UPSFF but shall be the amount necessary to cover all expenses described in subsection 5014.1.

5099 DEFINITIONS

5099.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

Adult Student – A student who is eighteen (18) years of age or older, or who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.

Appointed Representative – An individual acting on behalf of a person, pursuant to his or her written authorization, in presenting to school or chartering authority officials documentation to establish or verify the District residency of the person seeking to enroll the student

Care or Control – A parent, custodian, guardian, other primary caregiver, or person with whom a child is residing with is exercising primary responsibility to provide the child with guidance, maintenance, and physical care as follows:

Guidance is participation in the responsibility for the child's development on a daily basis. Such participation includes, but is not limited to, attending school conferences, disciplining the child, participating in decisions concerning the child's well-being and involvement in the child's extracurricular activities;

Maintenance is providing necessities such as food, clothing and shelter; and

Physical care is providing continuous care for the child by performing tasks required in the child's daily life. Such tasks include, but not limited to, bathing, feeding, dressing, assuring medical attention will be received by the child, preparing meals, supervising the child's activities and assisting with other physical care needs.

Chartering Authority – A District of Columbia entity authorized to grant charters for the establishment of public charter schools, pursuant to either the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.01 *et seq.*) (2012 Repl. and 2015 Supp.)), or the Public Charter School Act of 1996, effective May 29, 1996 (D.C. Law 11-135; D.C. Official Code § 1701.01 *et seq.*) (2012 Repl. and 2015 Supp.)) as amended.

Child – A person who is less than eighteen (18) years of age.

Common Lottery – a single, random lottery that determines placement for new students at all participating schools, including but not limited to, public charter schools (PK3–12), DCPS out-of-boundary schools (PK3–12), all DCPS PK3 and PK4 programs, including in-boundary school; and DCPS selective citywide high schools (9–12) that is governed by the Common Lottery Board established by the Common Lottery Advisory Board Establishment Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Code § 38-194) (2012 Repl. and 2015 Supp.)).

Custodian – A person to whom physical custody has been granted by a court of competent jurisdiction.

Formal Custody Agreement – A determination by a court of competent jurisdiction providing for the legal custody and physical custody of a child.

District Funded School(s) – Includes any public school, public charter school, private or public school outside of the District of Columbia receiving funding from the District of Columbia.

District of Columbia Public Schools or DCPS – The District of Columbia Public Schools system, not including public charter schools.

District Public School(s) – Includes any school within the District of Columbia Public Schools system or any District of Columbia public charter school.

Enroll and Enrollment – A process through which a student obtains admission to a public or public charter school that includes, at a minimum the following stages:

- (a) Application by student to attend the school;

- (b) Acceptance and notification of an available slot to the student by the school;
- (c) Acceptance of the offered slot by the student (signified by completion of enrollment forms and parent signature on a “letter of enrollment agreement form”);
- (d) Registration of the student in the Student Information System (SIS) by school upon receipt of required enrollment forms and letter of enrollment agreement; and
- (e) Receipt of educational services, which are deemed to begin on the first official school day.

Guardian – A person who has been appointed legal guardian of a student by a court of competent jurisdiction.

Legal custody – A determination by a court of competent jurisdiction that a parent has legal responsibility for a child, which includes the right to make decisions regarding a child’s health, education, and general welfare.

Local Educational Agency or LEA – Pursuant to 20 USCS § 7801(26)(A), a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

McKinney-Vento Act – The McKinney-Vento Homeless Education Assistance Act of 1967 (101 Stat. 482; 42 U.S.C. §§ 11301 *et seq.*).

Office of the State Superintendent of Education or OSSE – The state level agency established by Chapter 26 of Title 38 of the D.C. Official Code.

Orphan – A child who resides in the District of Columbia and who does not have a living parent or guardian.

Other Primary Caregiver – The person other than a parent or court appointed custodian or guardian who is the primary provider of care and support to a child who resides with him or her, and whose parent, custodian, or guardian is unable to supply such care and support and submits evidence that he or she is the primary caregiver of the student in the manner provided in D.C. Official Code § 38-310 and this Chapter.

Parent – The natural parent, stepparent, or parent by adoption who has custody or control of a student, including joint custody.

Pre-K age child – A child who is (i) three (3) years of age on or before September 30 of the program year for which the child is being enrolled; (ii), four (4) years of age; or (iii) five (5) years of age after September 30 of the program year for which the child is being enrolled.

Physical custody – A determination by a court of competent jurisdiction of a child's living arrangements including where the child resides and any visitation schedule.

Physical presence – The actual occupation and inhabitation of a place of abode with the intent to dwell for a continuous period of time.

Public Charter School – A District of Columbia school authorized to operate by a chartering authority.

School – A public charter school, a school within the District of Columbia Public Schools system, a school in another state or a nonpublic school in the District of Columbia enrolling a student funded by the District of Columbia.

School-age student – A child who is between five (5) years of age on or before September 30 of the current school year and eighteen (18) years of age.

Self-supporting student – A minor student who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.

Student experiencing homelessness – An individual who lacks a fixed, regular, and adequate nighttime residence. These individuals shall include pre-K age children, school-age children, or eligible adult students:

- (a) Sharing the housing of other persons due to loss of housing, economic hardship or similar reasons;
- (b) Living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodation;
- (c) Living in emergency or transitional shelters, (including D.C. transitional housing);
- (d) In a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation or human habitation;

- (e) Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- (f) Living in a hospital due to abandonment;
- (g) Migratory children, as defined in section 1309 of the Elementary and Secondary Education Act of 1965, (115 Stat. 1579; 20 U.S.C. § 6399), who qualify as homeless because they live in circumstances described above; or
- (h) Unaccompanied youth, including youths who are not in physical custody of a parent or guardian, who qualify as homeless because they live in circumstances described above.

Serious Family Hardship – Death, incarceration, serious illness, abuse or neglect by parent, active military assignment, drug addiction or loss of habitability of a parent, guardian, or custodian.

Support – A parent, custodian, guardian, other primary caregiver, or person with whom a child is residing who is exercising primary responsibility to provide the child with financial resources for the child's livelihood.

Uniform Per Student Funding Formula or UPSFF – The amount of funding provided for each student attending a public school in the District of Columbia pursuant to section 2401 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C. Official Code § 38-1804.01).

Waiting List – A roster of students maintained by the LEA or school of students seeking enrollment.

Ward – A child who is a District of Columbia foster child, either living in or outside of the District, or a child who is in the custody of a District of Columbia public child welfare agency or juvenile justice system.

The following Subsections and Sections of Chapter 20, ADMISSIONS OF STUDENTS. of Title 5-E DCMR, ORIGINAL TITLE 5 are hereby deleted in their entirety:

Subsection 5E-2000.2

Subsection 5E-2000.4

Subsection 5E-2000.5

Subsection 5E-2002.11

Subsection 5E-2002.15

Subsection 5E-2002.16

Sections 5E-2006 through 5E-2009

Section 5E-2999

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the D.C. Register via email addressed to: ossecomments.proposedregulations@dc.gov; or by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: Residency Verification and Investigations, 810 First Street, NE 9th Floor, Washington, DC 20002. Additional copies of this rule are available from the above address and on the Office of the State Superintendent of Education website at www.osse.dc.gov.