

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

HOUSE BILL 1074  
RATIFIED BILL

AN ACT TO CLARIFY THE PROCEDURE FOR ADMITTING CHILDREN TO THE  
PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 115C-366 reads as rewritten:

**"§ 115C-366. Assignment of student to a particular school.**

(a) All students under the age of 21 years who are domiciled in a school administrative unit who have not been removed from school for cause, or who have not obtained a high school diploma, are entitled to all the privileges and advantages of the public schools to which they are assigned by the local boards of education. The assignment of students living in one local school administrative unit or district to a school located in another local school administrative unit or district, shall have no effect upon the right of the local school administrative unit or district to which the students are assigned to levy and collect any supplemental tax heretofore or hereafter voted in that local school administrative unit or district.

(a1) Children living in and cared for and supported by an institution established, operated, or incorporated for the purpose of rearing and caring for children who do not live with their parents ~~shall be~~ are considered legal residents of the local school administrative unit in which the institution is located. These children ~~shall be deemed to qualify~~ are eligible for admission to the public schools of the local school administrative unit as provided in this section. ~~This subsection shall apply to foster homes and group homes.~~

(a2) It is the policy of the State that every child of a homeless individual and every homeless child and youth have ~~has~~ access to a free, appropriate public education. ~~education on the same basis as all children who are domiciled in this State. The local board of education having jurisdiction where the child is actually living shall enroll the child in the school administrative unit where the child is actually living. In no event shall the child be denied enrollment because of uncertainty regarding his the child's domiciliary status, regardless of whether the child is living with the homeless parents or has been temporarily placed elsewhere by the parents. The State Board of Education and every local board of education shall ensure compliance with the federal McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The A local board of education shall not charge the a homeless child, as defined in this subsection, child or youth tuition for enrollment. The An unaccompanied youth or a homeless child's or youth's parent, guardian, or person standing in loco parentis to the child, legal custodian may apply to the State Board of Education for a determination of whether a particular local board of education shall enroll the homeless child or youth, and this determination shall be binding on the local board of education, subject to judicial review. As used in this subsection, the term "homeless" refers to an individual who (i) lacks a fixed, regular, and adequate nighttime residence or (ii) has a primary nighttime residence in a supervised publicly or privately operated shelter for temporary accommodations, lives in an institution providing temporary residence for individuals intended to be institutionalized, or a public or private place not designated for, or ordinarily used as, a regular sleeping accommodation for human beings. The term does~~

~~not include persons who are imprisoned or otherwise detained pursuant to federal or State law.~~

(a3) A student who is not a domiciliary of a local school administrative unit may attend, without the payment of tuition, the public schools of that unit ~~if~~ if all of the following apply:

- (1) The student resides with an adult, who is a domiciliary of that unit, as a result ~~of~~ of any one of the following:
  - a. The death, serious illness, or incarceration of a parent or legal guardian,
  - b. The abandonment by a parent or legal guardian of the complete control of the student as evidenced by the failure to provide substantial financial support and parental guidance,
  - c. Abuse or neglect by the parent or legal guardian,
  - d. The physical or mental condition of the parent or legal guardian is such that he or she cannot provide adequate care and supervision of the student, ~~or~~
  - e. The relinquishment of physical custody and control of the student by the student's parent or legal guardian upon the recommendation of the department of social services or the Division of Mental Health, or
  - f. The loss or uninhabitability of the student's home as the result of a natural ~~disaster;~~ disaster.
- (2) The student is not currently under a term of suspension or expulsion from a school for conduct that could have led to a suspension or an expulsion from the local school administrative ~~unit;~~ and unit.
- (3) The caregiver ~~adult with whom the student resides~~ and the student's parent, guardian, or legal custodian have each completed and signed separate affidavits that:
  - a. Confirm the qualifications set out in this subsection establishing the student's residency,
  - b. Attest that the student's claim of residency in the unit is not primarily related to attendance at a particular school within the unit, and
  - c. Attest that the caregiver ~~adult with whom the student is residing~~ has been given and accepts responsibility for educational decisions for the child, ~~including receiving notices of discipline under G.S. 115C 391, attending conferences with school personnel, granting permission for school related activities, and taking appropriate action in connection with student records.~~ student.

~~For purposes of subdivision (1)c. of this subsection, a student shall be deemed to be abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect and that definition shall also apply to this subsection.~~

If the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign the affidavit, then the caregiver ~~adult with whom the student is living~~ shall attest to that fact in the affidavit. If the student is a minor, the caregiver adult must make educational decisions concerning the student and has the same legal authority and responsibility regarding the student as a parent or legal custodian would have even if the parent, guardian, or legal custodian does not sign the affidavit. The minor student's parent, legal guardian, or legal custodian retains liability for the student's acts.

Upon receipt of both affidavits or an affidavit from the caregiver ~~adult with whom the student is living~~ that includes an attestation that the student's parent, guardian, or legal custodian is unable, refuses, or is otherwise unavailable to sign an affidavit, the

local board shall admit and assign as soon as practicable the student to an appropriate school, as determined under the local board's school assignment policy, pending the results of any further procedures for verifying eligibility for attendance and assignment within the local school administrative unit.

If it is found that the information contained in either or both affidavits is false, then the local board may, unless the student is otherwise eligible for school attendance under other laws or local board policy, remove the student from school. If a student is removed from school, the board shall provide an opportunity to appeal the removal under the appropriate policy of the local board and shall notify any person who signed the affidavit of this opportunity. If it is found that a person willfully and knowingly provided false information in the affidavit, the maker of the affidavit shall be guilty of a Class 1 misdemeanor and shall pay to the local board an amount equal to the cost of educating the student during the period of enrollment. Repayment shall not include State funds.

Affidavits shall include, in large print, the penalty, including repayment of the cost of educating the student, for providing false information in an affidavit.

(a4) When a student transfers into the public schools of a local school administrative unit, that local board shall require the student's parent, guardian, or legal custodian to provide a statement made under oath or affirmation before a qualified official indicating whether the student is, at the time, under suspension or expulsion from attendance at a private or public school in this or any other state or has been convicted of a felony in this or any other state. This subsection does not apply to the enrollment of a student who has never been enrolled in or attended a private or public school in this or any other state.

(a5) Notwithstanding any other law, a local board may deny admission to or place reasonable conditions on the admission of a student who has been suspended from a school under G.S. 115C-391 or who has been suspended from a school for conduct that could have led to a suspension from a school within the local school administrative unit where the student is seeking admission until the period of suspension has expired. Also, a local board may deny admission to or place reasonable conditions on the admission of a student who has been expelled from a school under G.S. 115C-391 or who has been expelled from a school for behavior that indicated the student's continued presence in school constituted a clear threat to the safety of other students or employees or who has been convicted of a felony in this or any other state. If the local board denies admission to a student who has been expelled or convicted of a felony, the student may request the local board to reconsider that decision in accordance with G.S. 115C-391(d).

(a6) A child who is placed in or assigned to a licensed facility is eligible for admission, without the payment of tuition, to the public schools of the local school administrative unit in which the licensed facility is located. If an agency or person, other than the student's parent or guardian, is the student's legal custodian and if that person or agency placed or assigned the student to a licensed facility under this subsection, then that agency or person must provide in writing to the school the name, address, and phone number of the individual who has authority and the responsibility to make educational decisions for the student. This individual shall reside or be employed within the local school administrative unit and shall provide in writing to the school a signed statement that the individual understands and accepts this authority and responsibility to make educational decisions for the student. If the student's parent or legal guardian retains legal custody of a child who is placed in or assigned to a licensed facility under this subsection, then the requirements of subsection (a3) of this section must be met.

(a7) A student who is a resident of a local school administrative unit because the student resides with a parent, guardian, or legal custodian who is a (i) student, employee, or faculty member of a college or university or (ii) visiting scholar at the National Humanities Center is considered domiciled in that unit for purposes of this section.

(a8) A student is considered domiciled in a local school administrative unit for purposes of this section if the student resides (i) with a legal custodian who is not the student's parent or guardian and the legal custodian is domiciled in the local school administrative unit, or (ii) in a preadoptive home following placement by a county department of social services or a licensed child-placing agency.

(b) Each local board of education shall assign to a public school each student qualified for assignment under this section. Except as otherwise provided by law, the authority of each board of education in the matter of assignment of children to the public schools shall be full and complete, and its decision as to the assignment of any child to any school shall be final.

(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to ~~his~~ the child's parent's or guardian's service in the General Assembly, other than the local school administrative unit in which ~~he~~ the child is domiciled, is entitled to attend school in the local school administrative unit of that residence as if ~~he~~ the child were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time.

(d) A student domiciled in one local school administrative unit may be assigned either with or without the payment of tuition to a public school in another local school administrative unit upon the terms and conditions agreed to in writing between the local boards of education involved and entered in the official records of the boards. The assignment shall be effective only for the current school year, but may be renewed annually in the discretion of the boards involved.

(e) The boards of education of adjacent local school administrative units may operate schools in adjacent units upon written agreements between the respective boards of education and approval by the county commissioners and the State Board of Education.

(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements established by the State Board of Education and the North Carolina High School Athletic Association.

(g) Any local school administrative unit may use the actual address of a program participant for any purpose related to admission or assignment ~~pursuant to~~ under this Article as long as the address is kept confidential from the public under ~~the provisions of~~ Chapter 15C of the General Statutes. The substitute address designated by the Attorney General under the Address Confidentiality Program shall not be used as an address for admission or assignment purposes.

(h) The following definitions apply in this section:

- (1) Abused or neglected. – A student is considered abused or neglected if there has been an adjudication of that issue. The State Board may adopt an additional definition of abuse and neglect, and that definition also shall apply to this section.
- (2) Caregiver adult. – The adult with whom the child resides. For children placed or assigned in a licensed facility, a caregiver adult also may be the child's caretaker, foster parent, or other clearly identifiable adult who resides in the county where the licensed facility is located.
- (3) Educational decisions. – Decisions or actions recommended or required by the school concerning the student's academic course of study, extracurricular activities, and conduct. These decisions or actions include enrolling the student, receiving and responding to notices of discipline under G.S. 115C-391, attending conferences with school personnel, granting permission for school-related activities, granting permission for emergency medical care, receiving and taking appropriate action in connection with student records, and any other

decisions or actions recommended or required by the school in connection to that student.

- (4) Facility. – A group home, a family foster home as defined in G.S. 131D-10.2(8), or a therapeutic foster home as defined in G.S. 131D-10.2(14).
- (5) Homeless. – Individuals who lack a fixed, regular, and adequate nighttime residence or are included in the definition of homeless children and youths in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001. The term does not include persons who are imprisoned or otherwise detained pursuant to federal or State law.
- (6) Legal custodian. – The person or agency that has been awarded legal custody of the student by a court.
- (7) Licensed facility. – A facility licensed under Article 2 of Chapter 122C of the General Statutes or under Article 1A of Chapter 131D of the General Statutes.
- (8) McKinney-Vento Homeless Education Assistance Improvements Act of 2001. – 20 U.S.C. § 11431, et seq., as amended, and federal regulations adopted under this act.
- (9) Program participant. – An individual accepted into the Address Confidentiality Program under Chapter 15C of the General Statutes.
- (10) Unaccompanied youth. – Youths who are not in the physical custody of a parent or guardian as defined in the McKinney-Vento Homeless Education Assistance Improvements Act of 2001."

**SECTION 2.** G.S. 115C-366.2 is repealed.

**SECTION 3.** This act becomes effective July 1, 2006, and applies beginning with the 2006-2007 school year.

In the General Assembly read three times and ratified this the 29<sup>th</sup> day of June, 2006.

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Beverly E. Perdue  
President of the Senate

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James B. Black  
Speaker of the House of Representatives

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Michael F. Easley  
Governor

Approved \_\_\_\_\_m. this \_\_\_\_\_ day of \_\_\_\_\_, 2006