

## 5I - SECTION 105 and 105c SCHOOLS OF CHOICE PUPILS

Accepting nonresident pupils under Sections 105 and 105c Schools of Choice is a district decision. The district must determine if the Schools of Choice will be specific to a building, a grade level, or a program. The district must also determine if the district will accept pupils from districts within the ISD boundaries (Section 105), accept pupils from districts within the boundaries of an ISD that is contiguous to the ISD of the enrolling district (Section 105c), or both. The district shall not charge tuition for pupils who are enrolled under Section 105 or Section 105c. The resident district's approval is not required for pupils enrolled under Sections 105 and 105c.

### A. Pre-enrollment Requirements of the District

The district must abide by specific time-lines and comply with specific criteria in the application and selection process. A district found to be in noncompliance with the regulations established under Sections 105 and/or 105c of the State School Aid Act is subject to forfeiture of 5% of the district's entire state school aid for the year in question. ~~Failure to meet the requirements under Sections 105 and 105c may result in a state school aid penalty.~~

1. A district having a limited number of spaces and enrolling Section 105 or Section 105c nonresident pupils must do the following:
  - ✓ Provide notice to the general public that applications will be taken for at least 15 calendar days but not more than 30 calendar days from nonresidents for enrollment in a specified grade(s), specified school(s), and/or specified program(s).
  - ✓ The notice shall identify the 15-day dates of the application period and the place and manner for submitting applications.
  - ✓ During the application period, accept applications from nonresidents for enrollment in that grade, school, or program.
  - ✓ Within 15 calendar days after the end of the application period, using the procedures and preferences stated in Section 105 and 105c, determine which nonresident applicants will be allowed to enroll in that grade, school, or program through a random draw system if necessary.
  - ✓ Notify the parent or legal guardian of each nonresident applicant of whether or not the applicant may enroll in the district.
  - ✓ The notification to parents or legal guardian of nonresident applicants accepted for enrollment shall contain notification of the date by which the applicant must enroll in the district and the procedures for enrollment.
  - ✓ Beginning on the third Monday in August and not later than the end of the first week of school, if any positions become available in a grade, school, or program due to accepted applicants failing to enroll or to more positions being added, the district may enroll nonresident applicants from the waiting list determined during the random draw, offering enrollment in the order that applicants appear on the waiting list.
  - ✓ The date for enrollment shall be no later than the end of the first week of school.

**Note:** If there are still positions available after enrolling all applicants from the waiting list who desire to enroll, the district may not fill those positions until the second semester or second trimester.

2. A district having an unlimited number of spaces and enrolling Section 105 or Section 105c nonresident pupils must do the following:
  - ✓ Provide notice to the general public that applications will be taken from nonresidents for enrollment in specified grade(s), specified school(s), or specified program(s).
  - ✓ The notification shall provide information of the place and manner for submitting application and the application period must be at least 15 calendar days.
  - ✓ The district may accept applications for enrollment until the end of the first week of school.
  - ✓ Not later than the end of the first week of school, the district shall notify the parent or legal guardian of each nonresident applicant who is accepted for enrollment in the grade, school, or program of the date by which the applicant must enroll in the district and the procedures for enrollment.
  - ✓ The date for enrollment shall be no later than the end of the first week of school.
  
3. Not later than two weeks prior to the end of the first semester or first trimester, the district shall publish the grade level(s), school (building(s)), or specific program(s), if any, for which enrollment for the second semester or second trimester may be available. The district may receive applications during that two-week period. By the beginning of the second semester or second trimester, using the random drawing and waiting list procedures as required under Sections 105 and 105c, the district shall determine which nonresident applicants will be allowed to enroll in the district. Notification to the parent or legal guardian shall specify which grade level, school (building), or specific program, if any, for which the applicant has been accepted and the date by which the applicant must enroll in the district and the procedure for enrollment. The date for enrollment shall be no later than the end of the first week of school.

#### **B. Other Specific Regulations Under Sections 105 and 105c**

A district may limit the number of nonresident pupils it accepts in a grade level, a school (building), or a specific program, if any, and may use that limit as the reason for refusal to enroll an applicant. However, a district may not grant or refuse enrollment to an applicant based on:

- ✓ A pupil's intellectual, academic, artistic, or other abilities, talents, or accomplishments, or lack there-of.
- ✓ The pupil's mental or physical disabilities, except that the applicant does not meet the criteria (other than residency) that a resident must meet to be accepted for enrollment in a grade level or a specialized magnet, or intra-district choice school or program, for which the applicant applies.
- ✓ A pupil's age, except for a program that is not appropriate for the age of the

- applicant
- ✓ The pupil's religion, race, color, natural origin, sex, height, weight, marital status, or athletic ability, or generally, in violation of a state or federal law prohibiting discrimination.

Special education programs and services are not considered "special programs" under Section 105 or 105c. A district may refuse to enroll a nonresident applicant if that applicant is, or has been suspended from another district within the preceding two years or if the applicant has ever been expelled from another district; **except**, the district shall not refuse to enroll or continue to enroll such a pupil if the district counted that pupil in membership either on the membership count day or the supplemental count day. The district may expel a pupil for disciplinary reasons.

**C. Eligibility to Count the Nonresident Pupil for Membership**

1. A local school district that elects to enroll pupils under Sections 105 or 105c **Schools of Choice Program** may count a nonresident pupil in membership if the district has evidence that the pupil meets **one** of the following criteria:
  - ✓ The pupil is a nonresident, but is a resident of another district within the same ISD. The local district may only count this pupil in membership if all Schools of Choice Section 105 requirements have been met.
  - ✓ The pupil is a nonresident, but is a resident of another district within an ISD that is contiguous to the educating district's ISD. The local district may only count this pupil in membership if all Schools of Choice Section 105c requirements have been met.
  - ✓ The pupil was enrolled in and attended the district in the school year or semester immediately preceding the school year or semester in question under Sections 105 or 105c. The district shall continue to enroll the pupil until the pupil graduates from high school unless the pupil is expelled or withdraws from the district
  - ✓ The pupil is a nonresident, but has been enrolled continuously in the district since a year in which the district enrolled nonresident pupils in accordance with Sections 105 or 105c.
  - ✓ A district shall give preference to a school-age pupil who resides in the same household as a pupil that was enrolled in and attended the district the immediately preceding school year or semester.
2. A local school district that enrolls a **special education pupil under a Schools of Choice Program** will become that pupil's resident district for purposes of developing and implementing an individualized education plan (IEP), and will become responsible for the education of and providing (or arranging for the provision of) services for the pupil. Section 105c (contiguous) contains an additional requirement that the choice district must enter into a written cooperative agreement with the special education pupil's resident district as to the payment of added costs associated with the pupil's programs and as to how services will be handled. The written agreement shall address how the agreement shall be amended in the event of significant changes in the costs or level of special education programs or services required by the pupil. If a nonresident pupil was enrolled under Section 105c, Schools of Choice, and that pupil subsequently is determined eligible for special

education services, the district must enter into a written cooperative agreement with the special education pupil's resident district as to the payment of added costs for programs and services. If a cooperative agreement cannot be obtained with the pupil's resident district, the pupil shall not be enrolled in the nonresident district beginning on the next count date.

3. A local school district may enroll and count in membership a nonresident pupil as a parent paid tuition pupil in those buildings and/or programs which are not designated as choice programs; or may enroll and count in membership a nonresident pupil in a choice program after the specific deadlines have passed. To count the pupil in membership, approval from the resident district must be obtained. This pupil is not considered a Schools of Choice pupil.
4. A local school district may participate in a cooperative education program with one or more local or intermediate districts whether or not it operates a Schools of Choice Program.

**NOTE:** Schools of Choice does not apply to a pupil residing in a district that does not operate all of the grades K to 12 (referred to as Non-K-12) and the pupil is enrolled in a district, other than the district of residence, in a grade that is not offered by the district of residence. (Such a pupil is reported in residency as a Non-K-12 pupil.)

**NOTE:** A district is not required to provide transportation for a nonresident pupil enrolled in the district under Sections 105 or 105c or for a resident pupil enrolled in another district under Sections 105 or 105c. However, at the time of enrollment, a district shall provide to the pupil's parent or legal guardian, information on available transportation to and from the school in which the pupil enrolls.

#### **D. Regulatory References**

State School Aid Act  
388.1705  
388.1705c

Attorney General Opinion  
2000 AG Op No 7046

#### **Pupil Had Been Expelled**

Q #1

A parent applied to enroll her high school age child in the district's alternative education program under Section 105. The parent failed to disclose the information that this pupil had been expelled from the resident district. That information was revealed when the pupil's records were received from the resident district. May the district expel this pupil based upon the fact that the mother failed to disclose this information?

A #1

~~Yes. A district may choose to not enroll a pupil who has been suspended or expelled from the pupil's district of residence. Not having that information available at the time of enrollment, the district could not choose to not enroll this pupil under section 105. Therefore, the district may choose to expel the pupil at the time of disclosure.~~

No. A district may choose to not enroll a pupil who has been suspended or expelled from the district where the pupil had previously been enrolled; however, if this information is

not obtained by the choice district until after the pupil has been counted in membership, then the choice district must continue to enroll the pupil in the district.

Q #2

A parent applied to enroll her elementary school age child for a grade level which the district had posted that it was accepting applications under Schools of Choice, section 105c. In the process of reviewing the application the district noted that the parent had indicated that the child was currently receiving special education services in the resident district in a self-contained classroom. May the district refuse to accept the application for enrollment on the basis that its self-contained classrooms for pupils at this grade level are at capacity?

A #2

No. Special education programs and services are not considered "special programs" and the district must consider the application for enrollment as it would for any applicant without regard to special education needs or services. If the pupil meets all other criteria for enrollment the pupil must be enrolled and provided special education services required.

### **Special Education pupil under 105c**

Q #3

The pupil is enrolled under Schools of Choice, Section 105c. The parent did not relay the information that the child was a special needs child when enrolling him. It was not discovered until after school began that this pupil needed an IEP and to be educated through the special education program. The resident district refuses to agree to any additional costs. May the district dismiss the pupil?

A #3

Yes, without a cooperative agreement with the resident district, the district cannot enroll this pupil beginning on the next count date. Thus, it is **required** to send the pupil back to the resident district.

### **Special Education Early Childhood**

Q #4

Mother enrolls her child in the SEEC program and then moves out of the district. The mother continues to work in the district; and, grandmother, who is the day care provider, resides within the district. An older brother to this child is enrolled in the district under Schools of Choice. Does the fact that brother is enrolled under Schools of Choice, mother works in the district, and grandmother resides within the district entitle the preschooler to attend the SEEC program in the district?

A #4

Section 105 and 105c entitle other K-12 pupils who reside in the household with a second year Schools-of-Choice pupil to attend a district under Schools of Choice beginning in the second year, semester or trimester of attendance. The special education early childhood program is part of the special education F.T.E. count; thus, the SEEC pupil would meet the requirements to be enrolled under schools of choice;

however, the district must have elected to accept pupils under sections 105 or 105c for the SEEC program, and the parent must make application for the program. If the pupil is accepted for enrollment under section 105c, then the district must enter into a written cooperative agreement with the special education pupil's resident district as to the payment of added costs associated with the pupil's programs and as to how services will be handled.

### **Other members of the household**

Q #5

A pupil's parents reside separately in two neighboring districts. The pupil has enrolled in a third district under Schools of Choice and will generate the lesser of the foundation allowance of the educating district and the resident district. Does Section 24b of the State School Aid Act have any implication on this?

A #5

Section 24b strictly grants the child the right to enroll in either district in which the child's parents reside. Instead, the child has enrolled in a third district under Schools of Choice. Thus, Section 24b does not apply in this case and the child's resident district is the district where the custodial parent resides or where the child is actually living. If the child is residing in both districts on an equal basis, either district would be considered the resident district for purposes of determining the foundation amount that will be generated.

### **Second semester enrollment**

Q #6

The pupil and his family moved out of the district after count day. The district is a Schools of Choice district. May the pupil be enrolled under Schools of Choice second semester?

A #6

Section 6(6)(g), of the State School Aid Act, permits such a pupil to complete the school year in question without a release from the new resident district as long as there has not been a break in service (meaning the pupil had not been enrolled in the new district and decided s/he didn't like it there). Should the parents want the child to continue attending the previous district in the following school year, they would at that time have to apply for Section 105.