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# CEPI Education Law Newsletter

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## LOCAL SCHOOL BOARD RESIDENCY REQUIREMENTS

### Overview

Characterized as a valid exercise of the state's police power (i.e., necessary to create an enlightened citizenry and preserve to stability of the country) compulsory attendance statutes require that parents provide for the education of their school age children. In 2013, while several recognized and legitimate alternatives (e.g., private and home schools) and exemptions (e.g., bona fide religious belief) exist, most parents still choose public schools as their choice in meeting the specific mandates of their state's compulsory attendance law.

*Family Residency.* Under state law local boards of education are vested with legal authority to (1) carry out and enforce compulsory attendance, (2) set residency requirements, and (3) create geographically determined attendance zones within which school aged children gain access to publicly supported educational opportunities and services. (Vacca and Bosher, 2012) As a general rule, while state statutes differ, establishing *family residency* in a local school district is a common requirement in school age children gaining tuition-free access to programs and services. See, e.g., Graham v. Mock (N.C. App. 2001)

*Bona Fide Residency: The Supreme Court Speaks.* Thirty years ago the United States Supreme Court held, in Plyler v. Doe (1982), involving school age children (physically present in the local school district) but whose undocumented parents had not been "legally admitted to the United States," and Martinez v. Bynum (1982), involving a child born in the United States but whose parents were Mexican citizens (resided in Mexico), that while the state has a right to set *bona fide residency requirements* as a prerequisite to a child benefiting from public education tuition free, a distinction exists between durational residence requirements and *bona fide* residence requirements. A "*bona fide* residence requirement, appropriately defined and uniformly applied, furthers the substantial state interest in assuring that services provided for its residents are enjoyed only by residents.... A bona fide residence requirement simply requires that the person does establish residence before demanding the services that are restricted to residents…." Moreover, "the state thus has a substantial interest in imposing bona fide residence requirements to maintain the quality of local public schools." *Residence,* said the Court, "requires both physical presence and an intention to remain." As such, "a local school district generally would be justified in requiring school-age children or their parents to satisfy the traditional, basic residence

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criteria—i.e., to live in the district with a bona fide intention of remaining there—before it treated them as residents." Martinez v. Bynum (1983)

The sum and substance of thirty years of post- Plyler and Martinez case law can be briefly summarized as follows: Local school boards are responsible for the educational needs of all school age children living within the boundaries of the school district—especially where *bona fide residency requirements* (actual presence plus intent to remain) are met by parents.

**Mangiafico, et al. v. State Board of Education (Conn. App. 2012): Actual Residence**

Recently, I came across an interesting court decision from the Appellate Court of Connecticut where the issue dealt with the notion of *actual residence.* In Mangiafico, et al. v. State Board of Education (Conn. App. 2012) a father sought review of a state board of education's impartial hearing board's determination that his children were not *actual residents* of the city and thus not entitled to free public school accommodations.

*Facts.* In December 2005, plaintiff father purchased a residence in Farmington, Connecticut. He, along with his wife and children, began occupying the property in February, 2006. The family maintained significant contacts with Farmington and acted in a manner consistent with an intent to remain residents of Farmington (e.g., paid property taxes, listed the property address on motor vehicle registration, the family attended church, and plaintiff worked in Farmington).

In April 2006, additional construction began on the property, and plaintiff and his family moved back to property they owned in New Britain, Connecticut, where they resided continuously since 1996, until February 2006. Plaintiff intended to leave the property beginning in July 2006, and had executed a written lease with a prospective tenant.

In June 2006, heavy rain caused structural damage to the Farmington property, rendering it uninhabitable. Plaintiff attempted to obtain insurance proceeds to complete necessary repairs, but the insurance company refused to distribute the proceeds. Because the family could not return to the Farmington property he cancelled the lease with the prospective tenant and the family continued to reside in New Britain.

In September 2007, Plaintiff's children began attending school in Farmington. After receiving a complaint that the children were not residing in Farmington the local school board conducted an investigation and discovered that the children were residing in New Britain.

On January 8, 2009, the Farmington school board notified the plaintiff that his children were not residents of Farmington and therefore would not be permitted to attend school in Farmington after January 9, 2009. Plaintiff requested a school board hearing. The hearing was held on February 24, 2009.

At the time of the hearing plaintiff was in litigation against the insurance company and the Farmington property remained uninhabitable. The Farmington property was placed on the "blighted building" list on January 14, 2009, and was still on that list at the time of the school board hearing. While plaintiff intended to return to that property at the time of the hearing it was not known when that would occur.

On March 3, 2009, the school board issued its decision. In the board's opinion, under its policies, plaintiff's children were not residents of Farmington and therefore were not entitled to free school accommodations in the school district. On March 19, 2009, plaintiff father filed a timely appeal of the local board's decision with the

State Board of Education. Under Connecticut law the State Board of Education, on a written request for a hearing, shall establish an impartial hearing board to hold a public hearing in the local or regional school district. The hearing board may render a determination of actual residence of any child, emancipated minor, or pupil eighteen years or older, where residency is at issue.

On May 18, 2009, the impartial board issued a decision in which it held that the children were not residents of Farmington because they were not "actually residing in the school district." Because the children were residents of New Britain, they were not entitled to free school accommodations in Farmington.

*Superior Court Action.* On July 20, 2009, plaintiff appealed the impartial hearing board's decision to a state superior court. While not disputing the facts plaintiff attempted to distinguish them from other decisions relied on by the impartial hearing board. The Superior Court determined that the hearing board properly considered the facts in this case, including evidence supporting a finding that the family had ties to Farmington. However, the Superior Court agreed that an intent to return to the school district was not a proper basis for a finding of residency and that an indefinite absence of plaintiff's family from Farmington defeated his claim that he and his family were residents of Farmington. Accordingly, the appeal was dismissed.

Plaintiff father next took his case, *pro se*, to the Appellate Court of Connecticut where he claimed that the Superior Court's dismissal was improper because the impartial hearing board determined, among other things, that his children were not residents of Farmington at the time of the hearing, and there was no exception to the residency requirement due to natural disaster.

*Appellate Court Rationale and Decision.* The Appellate Court of Connecticut made it clear that a review of the record showed no evidence of abuse of discretion by the impartial hearing board. The Court found no evidence of unreasonable, arbitrary, or illegal actions.

On appeal plaintiff father argued that because his family's intent was to return to Farmington, his family had established a nexus to Farmington, and he eventually did return to Farmington, a finding of residency was supported. He further asserted that the hearing board improperly determined that the facts of the case supported a finding that his family was indefinitely displaced as opposed to temporarily displaced. The Appellate Court of Connecticut disagreed.

Citing and quoting directly from Connecticut statutory law the Court opined that by using the term "actual residence" in Conn. Gen. Stats., Section 10-186(b)(2), the hearing board had determined that the legislative intent was "to mean something narrower than what the term 'residence' can connote in other contexts." More specifically, state court interpretations of the statutory language require "the student's physical presence in the district…." Citing and quoting directly from Connecticut case law on point the Court said that "actual residence means" physically present and living [at a location] as a householder during significant parts of each day…." What is more, "the residence of the child for purposes of public school attendance is in the town where [the child's dwelling] is located."

Because in this case the impartial hearing board reasoned that "to prove actual residence, the party denied schooling had to demonstrate physical presence in the district, not just intent to reside, and there existed no natural disaster exemption in state law, the Connecticut Court of Appeals held that the hearing board had not abused its discretion by finding that the children did not actually reside in Farmington. In the Court's view, the hearing board correctly determined that "indefinite absence" is inconsistent with "actual residence."

*Decision:* Decided on October 23, 2012, the judgment is affirmed.

**Policy Implications**

Accurately projecting student enrollments from school year-to-school year cannot be overemphasized. Knowing how many students will be enrolled in district schools is a critical factor in accurately estimating school district budgetary needs. As local school boards work to project budgetary needs for the next school year, the shrinking nature of community fiscal resources, coupled with rapidly changing demographics, requires local school boards to once again reevaluate and uniformly apply existing family residency requirements and policies.

While Mangiafico, et al. v. State Board of Education (Conn. App. 2012) cannot be over generalized and universally applied to other jurisdictions, the appellate court's rationale is nonetheless instructive. Some implications for policy are briefly summarized as follows:

School system policies must make it clear that:

- Educational opportunities and services offered by the school district are open to and provided for all school age children officially enrolled in the school district.
- Families must establish *bona fide residence* (actual physical presence plus intent to remain) in the school district as a prerequisite for their school age children gaining access to educational opportunities and services provided by the school district.
- Evidence of family *bona fide residence* in the school district must be provided by parents and/ or legal guardians to school officials at the time of student registration and prior to a child's attendance at school.
- All appeals or requests for waivers or exemptions to school system student registration requirements, policies, and procedures must be made directly to the district superintendent of schools or the superintendent's designee.

**Final Comment.**

The recent total devastation of whole communities caused by natural storm-related disasters, especially in the north east, demonstrates that flexibility must be built into local family residency and student attendance policies. A readiness to pick up the pieces and move ahead in the best interests of families and children remain paramount.

**Resources Cited**

Conn. Gen. Stat. Sec.10-186(b)(2)

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