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August 18, 1995

Robert W. Healy
City Manager
City Hall
Cambridge, MA 02139

Re: Residency requirements for public schools;
Council Order #28 of 4/24/95

Dear Mr. Healy:

The City Council requested an opinion regarding what constitutes legal residency as a qualification for attending the public schools. Generally, "[e]very person shall have a right to attend the public schools of the town where he actually resides...." G.L.c.76, s.5. "The school committee of each town shall provide for and enforce the school attendance of all children actually residing therein in accordance herewith." G.L.c.76, s.1. A non-resident child may attend the public schools in another community either with the consent of both communities' school committees (G.L.c.76, s.12), or pursuant to the statutory school choice plan if seats are available in the host community and if the tuition for the non-resident student is reimbursed by the state (G.L.c.76, s.12B). Also, generally, the community in which a child with special needs resides must provide and pay for the special

education of that child. G.L.c.71B, ss.3 and 5.

The basic legal test of where a person resides or is domiciled is as follows:

A person's domicil is usually the place where he has his home. [Citation omitted]. Home is the place where a person dwells and which is the center of his domestic, social and civil life. [Citation omitted]. A person can have only one domicil. [Citation omitted]. The domicil, or residence, of a minor child generally is the same as the domicil of the parent who has physical custody of the child. George H. and Irene L. Walker Home for Children, Inc. v. Town of Franklin, 416 Mass. 291, 295 (1993).

In Teel v. Hamilton-Wenham Regional School District, 13 Mass.App. 345 (1982), the Court dealt with a pupil residency question in a situation where the pupil's house was divided by the boundary line between the towns of Hamilton and Essex. A substantial portion of the house lot was in Hamilton, but the house itself was almost all situated in Essex. Only a triangular portion of the house about seven feet long was located in Hamilton and the house fronted on a street in Essex. His parents took several measures to try to establish their residency in Hamilton (paid auto excises to Hamilton, family car garaged in the Hamilton portion of the house lot, took a post office box in Hamilton post office, paid realty taxes to both communities, was able to register to vote in Hamilton after some difficulty, and in the house rotated sleeping locations so that each family member regularly slept in the portion of the house in Hamilton).

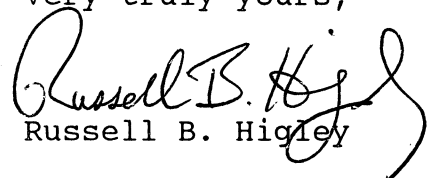
The Court held that legal residence was in Essex. "While it may generally be said that one resides in the jurisdiction in which he sleeps, when 'the dividing line of the towns... passes through

the room or even across his bed,' domicil becomes 'a question of fact depending upon the proofs.'" Teel at 349. The desire of the occupants to be residents in one town as opposed to the other is not a factor in determining domicil. Id. The Court based its decision on the fact that, "[t]hat part of the Teel house most closely connected with the primary purposes of a dwelling is located in Essex." Id.

In addition to the difficulty in determining residence arising when a house is split by a boundary line, the residence of a child "is not so obviously self-defining when considerations such as split families, guardianships, children living with foster parents, relatives or friends, and institutionalized children enter the picture." Board of Education v. School Committee of Amesbury, 16 Mass.App. 508, 512 (1983). Determinations of residency would have to be made based on the facts of each situation in light of the general legal definition. In the case of children with special needs, the state Department of Education is empowered by statute (G.L.c.71B, s.3) "to adopt regulations addressed to resolving the issue of residence in situations in which a child's legal residence may be in some doubt." George H. and Irene L. Walker Home for Children, Inc. v. Town of Franklin, 416 Mass. 291, 296 (1993).

Please contact me if further information is needed.

Very truly yours,


Russell B. Higley



EXECUTIVE DEPARTMENT
ROBERT W. HEALY
City Manager

RICHARD C. ROSSI
Deputy City Manager

CITY OF CAMBRIDGE
CAMBRIDGE, MASSACHUSETTS 02139

TEL. 349-4300
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September 11, 1995

To The Honorable, The City Council:

With reference to Awaiting Report Item No. 26, regarding residency requirement for pupils attending public schools, please find attached a response from City Solicitor Russell B. Higley.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Healy", is written over a horizontal line.

Robert W. Healy
City Manager

RWH/mec
attachment

Response to Awaiting Report Item Number
Twenty-Six regarding residency requirements
for pupils attending public schools.

for original order, see
1995 - City Manager
Requests # 166
9/18/95 - Report referred
to Superintendent of
Schools.

In City Council,

Sept. 11, 1995

Charter Right
exercised by
Councilman Triantafyllou
9/20/95. Copy sent to
Mary Lou McShatt (d)