SUMMARY OF RSA 193:12
PUPIL RESIDENCY AS OF JANUARY 1, 1998

HISTORY:
The New Hampshire Supreme Court has stated in the past that the terms “residence” and “resides” are “slippery words having many meanings”. Disputes frequently arise over the actual and the legal residence of pupils.

NEW LAW:
House Bill 154 (Chapter 183) of the 1997 Legislative session amends RSA 193:12. The new law establishes legal residence of a pupil and provides that regardless of any other law, students must be legal residents of the district in which they attend school unless the district or school board consents.

A. Residence of minors. The law establishes legal residence of a minor as where the parent resides except as follows:

1. Where the parents live apart and are not divorced, a minor’s residence is the residence of the parent with whom the child resides.

2. In cases of divorce:

   a. Where there is joint legal custody, residence is the residence of the parent with whom the child resides.

   b. Where one parent has sole or primary physical custody, the minor’s residence is the residence of the parent who has sole or primary physical custody. (If the parent with sole or primary physical custody lives outside of the State of New Hampshire, the pupil does not have residence in New Hampshire.)

3. If the student is a minor and in custody of a legal guardian (a guardian appointed by a New Hampshire court of competent jurisdiction or a court of competent jurisdiction in another state), the student resides where the guardian resides. If the New Hampshire Department of Health and Human Services is legal guardian, residence of the minor is where the child is placed by the Department or by a court.

B. Children of Homeless Parents. (The Stewart B. McKinney Act). The residence of children of homeless parents (homeless is defined as someone who has no fixed, regular and adequate residence or is in a public shelter for temporary accommodations) is where the child eats and sleeps unless parents and another school district agree that the child’s continued attendance in the district is:

   a) in the best interest of the child, and
   b) transportation will not be unduly burdensome to the school district.
LEGAL RESIDENT DEFINED:

A legal resident is a person who is domiciled in the school district and, if temporarily absent, a person who demonstrates an intent to maintain a principal dwelling place in the school district indefinitely and to return there, coupled with an act consistent with that intent. A person may only have one legal residence at a given time. If a person relocates to a town with the intention of remaining there indefinitely, that person loses the residence in the town they moved from even though they may intend to return at some future time.

CHILDREN PLACED IN HOMES FOR CHILDREN: RSA 193:27:

Nothing in the law affects a child’s right to attend public school of the district in which a home for children is located. The cost shifting statutes RSA 186-C:13, 193:27-29 still apply. The school district where child resides (receiving district) gets reimbursed by the sending district for certain special education costs.

WHO DECIDES RESIDENCE:

Superintendents decide residency. Disputes between superintendents go to the Commissioner of Education. The Commissioner’s decision may be appealed to court.

POLICY REQUIRED:

The law requires each school district to adopt an admission and attendance of non-resident students policy.

PENALTY:

Illegal attendance is a violation for the first offense and a misdemeanor for a subsequent offense.

EFFECTIVE DATE:

The law takes effect January 1, 1998.