

MEMORANDUM TO: Directors of Education

FROM: Andrew Bright
Director (A)
Education Funding Branch

DATE: May 7, 2018

SUBJECT: Clarification of Policies and Supporting Documentation to
Confirm Pupil Residency and Eligibility Status

The purpose of this memorandum is to clarify:

- documentation to support residency of pupils
- policies related to pupil eligibility to attend an Ontario school without paying a fee and documentation the ministry expects a board to review to substantiate eligibility
 - New for 2018-19: A board shall not charge a fee to a person if his or her parent or someone else with lawful custody of him or her is a full-time student enrolled in a certificate program that consists of a minimum of 2 to 3 semesters or 600+ hours of instruction and is consistent with the Certificate III parameters under the Ministry of Advanced Education and Skills Development's (MAESD) [Ontario Qualifications Framework](#).
- policies related to pupil eligibility for English as Second Language (ESL)/ Programme d'appui aux nouveaux arrivants (PANA) funding and documentation the ministry expects a board to review to substantiate eligibility

These clarifications are intended to ensure that funding for Ontario students is being applied appropriately and consistently across the province. This memorandum is a consolidation of previous memoranda on proof of residency of pupils, policies related to pupil eligibility to attend an Ontario school without paying a fee, and pupil eligibility for ESL/PANA.

School boards are reminded of their obligations, in particular as they relate to the collection and retention of personal information, under the *Municipal Freedom of*

Information and Protection of Privacy Act. For this reason, photocopies of a student's personal or immigration documentation (e.g. birth certificates, passports, visas) should not be retained in a student's Ontario Student Record (OSR) at the time of registration.

The sample Pupil Eligibility Attestation Form included in previous Enrolment Register Instructions (prior to the 2018-19 school year) has been updated and is attached as an appendix to this memo. School boards should use the revised Student Information and Eligibility Attestation Form (formerly Pupil Eligibility Attestation Form) or equivalent to record a student's information and attest to verifying relevant documentation to support a pupil's residency and eligibility. A version of the Student Information and Eligibility Attestation Form that can be downloaded is available on the ministry's website and Financial Analysis and Accountability (FAAB) website.

Documentation to Support Residency of Pupils

In order to support the residency of pupils, the ministry will accept the following documentation:

- current utility bill
- current property tax bill
- current phone bill
- current agreement of purchase of sale (property)
- other documentation to confirm a student's residency status

An Ontario driver's license is not an acceptable form of documentation to confirm a student's residency status.

Determining Student Eligibility

Tuition Exemption

Under subsection 49(6) of the Education Act, school boards are required to charge the maximum tuition fee, calculated in accordance with the regulations, to all persons admitted to school who are temporary residents or are in possession of a study permit. Exemptions from these tuition fees are set out under subsection 49(7) of the Education Act. Some of these exemptions and the required documentation for audit purposes are clarified below:

Applicants for Permanent Residence in Canada

Clause 49(7)(d) and subclause 49(7)(e)(ii) of the Education Act provide the following:

A board shall not charge a fee to, [...]

(d) a person if that person is awaiting determination of an application for permanent residence in Canada under the *Immigration and Refugee Protection Act (Canada)* ...,

(e) a person if his or her parent or someone else with lawful custody of him or her is in Canada,

(ii) as a permanent resident within the meaning of the *Immigration and Refugee Protection Act (Canada)* or is awaiting determination of an application for permanent residence in Canada under the *Immigration and Refugee Protection Act (Canada)*, ...

To qualify for a fee exemption under this provision, the student and his or her parent should provide the board with evidence that are permanent residents or have filed an application for permanent residence with an intention to remain in Canada and are awaiting a determination.

When auditing school boards, the ministry expects school boards to review the “Stage 1 approval letter” or equivalent documentation (e.g. an email confirmation) from Immigration, Refugees, and Citizenship Canada (IRCC), signifying that the applicant has met most of the eligibility requirements for the immigration class and has acquired approval in principle subject to meeting the remainder of the approval requirements. Once the documentation is reviewed by the school board, the student will be considered to have met the criterion of “awaiting determination of an application for permanent residence” and can be registered as a “pupil of the board”.

The Ministry may accept alternative evidence to support a student’s claim of awaiting determination of an application for permanent residence in Canada in circumstances where the board is confident that the application is based on an intention for the family to remain permanently in Canada and the Stage 1 approval letter and/or other equivalent documentation from IRCC is pending. For example, if the student has immigrated to Ontario because his or her parent or guardian is married to a Canadian citizen or permanent resident of Canada who resides in Ontario and the Stage 1 approval letter or other equivalent documentation has not yet been received. In such cases, the ministry expects that school boards review evidence of the application for permanent residence, a marriage certificate, and evidence that the Canadian spouse is an Ontario resident.

Children of Full-Time Ontario Postsecondary Students

Subclause 49(7)(e)(iv) of the Education Act provides the following:

A board shall not charge a fee to,

(e) a person if his or her parent or someone else with lawful custody of him or her is in Canada,

(iv) in accordance with authorization under the *Immigration and Refugee Protection Act* (Canada) to study in Canada and is a full-time student at a university, college or institution in Ontario ... that receives operating grants from the Government of Ontario, ...

A full-time postsecondary student described in this provision is a person who is designated as a “full-time pupil” by the institution and is enrolled in a degree, diploma, or certificate program. For certificate programs to qualify, they must consist of a minimum of 2 to 3 semesters or 600+ hours of classroom instruction and be consistent with the Certificate III parameters under the Ministry of Advanced Education and Skills Development’s (MAESD) [Ontario Qualifications Framework](#).

The university/college that the parent is attending would need to be recognized on the list of publicly-assisted colleges/universities, which includes their affiliates or federates, for the pupil to be tuition exempt.

The links below provide a list of the recognized universities/colleges:

- <https://www.ontario.ca/page/ontario-universities>
- <https://www.ontario.ca/page/ontario-colleges>

When auditing school boards, the ministry expects that school boards review the parent’s letter of acceptance to a qualified postsecondary program and a study permit. A copy of the parent or guardian’s letter of acceptance must be retained in the student’s OSR.

Guardianship

With respect to residency requirements, sections 33 and 36 of the Education Act provide that a person has the right to attend a school of a board without the payment of a fee if the person and the person’s parent or guardian both reside in the jurisdiction of the board. The Education Act defines “guardian”, for the purpose of these sections, as “a person who has lawful custody of a child, other than the parent of the child”.

There have been some cases in which students registering at school boards appear to have Ontario addresses despite the fact that their parents have addresses elsewhere. When determining whether to recognize for grant purposes a student whose parents do not reside in Ontario, the ministry will look for an Ontario court order transferring custody from the parents to an adult resident within Ontario, unless *all* of the following criteria are met:

- The student is a Canadian citizen or a permanent resident of Canada.
- The guardian is a member of the student’s immediate family and resides in Ontario in the school board jurisdiction in which the student wants to attend school.

- The guardian is assuming full responsibility for the care and well-being of the student, and the student is residing with the guardian throughout the custody period.
- A written agreement is in place between the parents of the student and the guardian that sets out all of the above, as well as the respective responsibilities of the parents and the guardian.

Guardianship arrangements that are supported by a court order or that meet the above criteria will satisfy ministry documentation requirements in the event of an enrolment audit.

Definition of an immediate family member for the purposes of validating a guardianship arrangement for grant purposes
The pupil's father, mother, grandfather and grandmother
The pupil's brothers and sisters and their lawful descendants who are not minors
The pupil's uncles and aunts by blood relation and their lawful descendants who are not minors

The written agreement or court order need to be available for audit purposes.

Students Claiming Refugee Status

Subclause 49(7)(c)(iii) of the Education Act provides the following:

A board shall not charge a fee to,

- (c) a person if that person, his or her parent or someone else with lawful custody of him or her is in Canada,
 - (iii) claiming refugee protection under the Immigration and Refugee Protection Act (Canada) or having had such protection conferred on him or her;

If a student and/or their parent or guardian is claiming refugee status, then they would be considered tuition exempt under subsection 49(7) of the Education Act. When auditing school boards, the ministry will look for documentation supporting a student's claim for refugee status.

Applicants for a Work Permit

Subclause 49(7)(e)(i) of the Education Act, provides the following:

A board shall not charge a fee to:

- (e) a person if his or her parent or someone else with lawful custody of him or her is in Canada,
 - (i) under a work permit or awaiting the determination of an application for a work permit under the Immigration and Refugee Protection Act (Canada).

To qualify for a fee exemption under this provision, the student's parent or guardian should provide the board with evidence that IRCC has approved their application for a work permit (through an email confirmation or in the form of a letter).

Students in Canada Unlawfully

If the student is in Canada unlawfully, section 49.1 of the Education Act provides that "A person who is otherwise entitled to be admitted to a school and who is less than eighteen years of age shall not be refused admission because the person or the person's parent or guardian is unlawfully in Canada."

Provided all other qualifications are met, the student shall not be refused admission and the payment of a fee is not required. For greater certainty, section 49(6) of the Education Act, which requires payment of a fee to certain classes of temporary residents, does not apply to persons who are in Canada unlawfully.

PPM 136, "Clarification of Section 49.1 of the *Education Act*: Education of Persons Unlawfully in Canada", does not state that children should absolutely be admitted in every case, meaning that they should not be admitted if other qualifications are not met (e.g. the student's parent or guardian does not reside in the jurisdiction of the board). Whether or not the student is otherwise qualified is a factual determination for the school board.

With respect to funding, PPM 136 also states:

Once admitted to school, students to whom s. 49.1 applies would, in most cases, be designated "pupils of the board" and would therefore generate provincial grants.

For audit purposes, a school board must provide supporting documentation and provide policies and procedures for admitting students under section 49.1 of the Education Act.

English as a Second Language (ESL)/ Programme d'appui aux nouveaux arrivants (PANA) Eligibility

Pupils that generate ESL/PANA Grants for Student Needs Funding under the recent immigrant component must satisfy the following criteria:

- The pupil is a "Pupil of the Board" who is under 21 years of age, as of December 31st of the current year;
- The pupil is enrolled in a school of the board on the October count date of the current school year;
- The pupil is born in a qualifying country;
 - For ESL, pupils born in countries other than Canada, Great Britain, Ireland, the United States, Australia, and New Zealand would be eligible for ESL funding);.

- For PANA –
 - eligible pupils were born in countries in which neither French nor English is the first language of a majority of the population or
 - the pupils were born in countries in which a majority of the population speak a variety of French that is sufficiently different from the French used as the language of instruction in schools of the board;
- The pupil entered Canada for the first time during the current or last four school years.

In order to confirm proof of entry into Canada, the ministry will look for a date of entry stamp in a student's passport. However, the Canadian Border Services Agency (CBSA) no longer stamps all passports at airports with Primary Inspection Kiosks. Families entering Canada with the intention of remaining in Canada must request a stamp from a border services officer at airports with Primary Inspection Kiosks after completing a kiosk transaction.

Students that are in Canada unlawfully (admitted under section 49.1 of the Education Act) are only eligible for ESL funding provided they satisfy all the eligibility criteria. This includes providing proof of entry date into Canada as noted in the paragraph above.

Should you have any questions or concerns, please email enrolment@ontario.ca.

Original signed by

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cc Superintendents of Business and Finance