

## 5-I: SECTIONS 105 AND 105C SCHOOLS OF CHOICE

Participation in a schools of choice program under Section 105 or Section 105c of the State School Aid Act (MCL 388.1705). 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.

### REQUIREMENTS FOR COUNTING IN MEMBERSHIP

A district may count a pupil in membership if all of the following are met:

- 1) The pupil must meet pupil membership eligibility requirements pursuant to Section 6(4) or 6(6) of the State School Aid Act (MCL 388.1606(4) or MCL 388.1606(6)) and any other applicable statute.
- 2) The pupil shall be registered, enrolled, and participating in the course(s) pursuant to Section 6(4), Section 6(8) and Section 6a of the State School Aid Act (MCL 388.1606(4), MCL 388.1606(8), and MCL 388.1606a).
- 3) A local school district that elects to enroll pupils under a Section 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:
  - a. The pupil 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.
  - b. The pupil 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.
  - c. 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.
  - d. The pupil has been enrolled continuously in the district as a Sections 105 or 105c pupil since the year in which the district began enrolling pupils under Sections 105 or 105c.
  - e. A school-age pupil who resides in the same household as the applicant pupil, has already been enrolled and attended the district under Section 105 or 105c. The pupil may be given enrollment preference under this section.
- 4) A local school district that enrolls a special education pupil under schools of choice 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 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 it is determined that a pupil is eligible for special education services prior to the pupil being enrolled under Section 105c by the district for the first time, and the district and resident district fail to reach a written agreement regarding the coverage of added costs of special education programs and services for the pupil, the pupil shall not be enrolled.

- 5) A local school district may enroll and count in membership a nonresident pupil as a parent paid tuition pupil in those buildings or programs that are not designated as choice programs or it 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 schools of choice pupil.

- 6) A district shall continue to allow a schools of choice pupil who was enrolled and in attendance in the district until the pupil graduates from high school, even if the pupil subsequently changes resident districts, if the pupil continues to be a resident of Michigan. This does not prohibit a district from expelling a pupil for disciplinary reasons.

Note: A local school district may participate in a cooperative education program with one or more local or intermediate school districts whether or not it operates a schools of choice program.

Note: School of choice does not apply to a pupil residing in a district that does not operate all grades, K to 12, (referred to as Non-K-12) who 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 Section 105 or 105c or for a resident pupil enrolled in another district under Section 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.

Note: Pupils enrolled under Section 5-E are not considered schools of choice pupils under this section (Section 105 or Section 105c) since these pupils are allowed additional enrollment options under Section 166b of the State School Aid Act (MCL 388.1766b).

#### 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 Section 105 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.

- 1) A district having a limited number of spaces and enrolling Section 105 or Section 105c nonresident pupils must do the following:
  - a. Provide notice to the 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), or specified program(s).
  - b. The notice shall identify the dates of the application period and the place and manner for submitting applications.
  - c. During the application period, accept applications from nonresidents for enrollment in that grade, school, or program.
  - d. Within 15 calendar days after the end of the application period, using the procedures and preferences stated in Section 105 and Section 105c, determine which nonresident applicants will be allowed to enroll in that grade, school, or program through a random draw system if necessary.
  - e. Notify the parent or legal guardian of each nonresident applicant of whether the applicant may enroll in the district.
  - f. The notification to the parents or legal guardians 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.
  - g. 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.
  - h. 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:
  - a. Provide notice to the public that applications will be taken from nonresidents for enrollment in specified grade(s), specified school(s), or specified program(s).
  - b. The notification shall provide information of the place and manner for submitting an application and the application period must be at least 15 calendar days.
  - c. The district may accept applications for enrollment until the end of the first week of school.
  - d. 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.
  - e. 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 the 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.

#### 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:

- 1) A pupil's intellectual, academic, artistic, or other abilities, talents, or accomplishments, or lack thereof.
- 2) 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.
- 3) A pupil's age, except for a program that is not appropriate for the age of the applicant.
- 4) The pupil's religion, race, color, natural origin, sex, height, weight, marital status, or athletic ability, or generally, for any reason that would be in violation of a state or federal law prohibiting discrimination.
- 5) Any reason specified below as an allowable reason for refusal to enroll an applicant if the district counted the pupil in membership on the count day or supplemental count day. A district may refuse to enroll a pupil as a schools of choice pupil if any of the following apply:
  1. The applicant is or has been within the preceding 2 years suspended from another school.
  2. The applicant has been expelled from another school.
  3. The applicant has been convicted of a felony.

**STATUTORY AND OTHER REFERENCES**State School Aid Act

MCL 388.1705

MCL 388.1705c

Attorney General Opinion

2000 AG Op No 7046

**QUESTIONS AND ANSWERS****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 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 on the fact that the mother failed to disclose this information?

A #1 No. Districts can only use an expulsion, suspension, or felony as selection criteria prior to enrolling the pupil. 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 for 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.

**Special Education Early Childhood**

Q #3 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 of 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 #3 Sections 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 FTE 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 apply 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 #4 A pupil's parents reside separately in neighboring districts. The pupil has enrolled in a third district under schools of choice and will generate the lesser of the foundation allowances of the educating district and the resident district. Does Section 24b of the State School Aid Act have any relevance?

A #4 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 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 #5 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 #5 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 if there has not been a break in service (meaning the pupil was not enrolled in the new district). 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.

**Removal of a Student:**

Q #6 How does a district remove a schools of choice pupil?

A #6 Once a student has been enrolled through schools of choice, the pupil may only be exited if the pupil is enrolled in another district or if the pupil is expelled under the same policy established for resident pupils.

**Enrollment Preference**

Q #7 The district has a pupil who was a resident last year but since moved from the district. Can the district provide enrollment preference to the pupil?

A #7 Preference is only provided under Sections 105 and 105c for pupils who have other school-age children who reside in the same household attending the schools of choice district.

**5-J: ISD SCHOOLS OF CHOICE OR FORMER SECTIONS 91 OR 91A**

Schools of Choice programs under former Section 91a of the State School Aid Act and ISD Schools of Choice programs under former Section 91 of the Act are subject to the requirements that apply to cooperative education programs. (See Section 5-B of this manual.) A nonresident pupil enrolled in one of these Schools of Choice programs shall continue to be enrolled until high school graduation even if the district ceases its participation in the program or the program is discontinued.