

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

ADVANCED NOTICE OF PROPOSED RULEMAKING

This Advanced Notice of Proposed Rulemaking is being shared publicly to provide stakeholders an opportunity to send comments to the Office of the State Superintendent of Education (OSSE) prior to formal publication of the Notice of Proposed Rulemaking.

As noted below, the rules are intended to update the basic policies and procedures for residency verification and non-resident investigations. The opportunity to comment on this Advanced Notice of Proposed Rulemaking ends on October 24, 2016. A Notice of Proposed Rulemaking will be published in the District of Columbia Register thereafter, providing further opportunity for public comment prior to final adoption of the rules. All comments received will be taken into consideration as part of the proposed rulemaking process prior to final adoption of these rules. In addition, final rulemaking action will not be taken until the later of thirty (30) days after the date of publication of the Notice of Proposed Rulemaking in the D.C. Register, State Board of Education approval of the proposed rulemaking and Council of the District of Columbia approval of the proposed rulemaking.

The State Superintendent of Education (“State Superintendent”), pursuant to section 3(b)(3) of the District of Columbia State Education Office Establishment Act of 2000, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code § 38-2602(b)(3) (2012 Repl. and 2015 Supp.)); sections 11 and 16 of the District of Columbia Nonresident Tuition Act, approved September 8, 1960 (74 Stat. 853; D.C. Official Code § 38-308(a) and 38-313 (2012 Repl. and 2015 Supp.)); section 101(d) of the Public School Enrollment Integrity Clarification and Board of Education Honoraria Amendment Act of 2004, effective April 13, 2005 (D.C. Law 15-348; D.C. Official Code § 38-2906.02(c) (2012 Repl. and 2015 Supp.)); and the District of Columbia Public Schools and Public Charter School Student Residency Fraud Prevention Amendment Act of 2012, effective May 9, 2012 (D.C. Law 19-126; D.C. Official Code § 38-312.01(c) (2012 Repl. and 2015 Supp.)), hereby gives notice of her intention to adopt the following proposed amendments to Chapter 50 (Residency Verification for Public Schools and Public Charter Schools) of Subtitle A (Office of the State Superintendent of Education), Title 5 (Education), of the District of Columbia Municipal Regulations (“DCMR”) and delete in their entirety subsections 2000.2, 2000.4, 2000.5, 2002.11, 2002.15, 2002.16, and sections 2006-2009 in Chapter 20 (Admissions of Students) of Subtitle E (Original Title 5), Title 5 (Education) of the DCMR.

The purpose of this rulemaking is to clarify the policies and procedures required to ensure District residents have access to available space at local schools, and that when extra space is available, non-resident students are permitted to enroll in a public school pay non-resident tuition. Through this rulemaking, the Office of the State Superintendent of Education (“OSSE”) seeks to reduce burden and lift barriers for both local education agencies and families in the residency verification process. However, given that universal pre-Kindergarten (pre-K) is not offered in neighboring jurisdictions, provisions to reduce burden for parents of school age children are not provided to parents of pre-K students.

Directions for submitting comments may be found at the end of this notice.

Chapter 50 (Residency Verification for Public Schools and Public Charter Schools) of Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR) is amended in its entirety to read as follows:

CHAPTER 50 STUDENT RESIDENCY

5000 GENERAL PROVISIONS

- 5000.1 The purpose of this Chapter is to establish residency verification and non-resident investigation procedures for all students attending District of Columbia Public Schools (“DCPS”) and public charter schools in the District.
- 5000.2 The review of all contested residency cases within DCPS and public charter schools, the promulgation of procedures for residency verification, and the enforcement of residency and tuition payment requirements shall be the sole and exclusive responsibility of the Office of the State Superintendent of Education, or its designee, effective October 1, 2017.
- 5000.3 Policies and procedures related to residency verification and enrollment shall be available to the public and shall be posted on OSSE and local education agency (“LEA”) websites.

5001 ESTABLISHING STUDENT RESIDENCY

- 5001.1 All pre-K age and school aged children or eligible adult students, who establish bona fide residency in the District of Columbia, may attend a District of Columbia public school or District of Columbia public charter school (collectively a “District public school”), a publicly funded pre-Kindergarten (“pre-K”) program in a community-based organization, or other school or educational program with funding provided by the District of Columbia, free of charge.
- 5001.2 A resident student shall have priority over a non-resident student seeking admission to a District public school, or other school or educational program with funding provided by the District of Columbia.
- 5001.3 In the absence of evidence to the contrary, residency for students under eighteen (18) years of age and not emancipated shall be presumed to be the bona fide residence of the student’s parents, guardian, custodian or other primary caregiver, as defined in this chapter.
- 5001.4 For the purposes of Sections 5001 to 5005, adult students or the parents, guardians, custodians, or other primary caregiver of a minor student shall be referred to as the person seeking to enroll the student.

- 5001.5 The District of Columbia is the bona fide residence of the student's parents, guardian, custodian, primary caregiver, or adult student for the purposes of this Chapter, if the person seeking to enroll the student has established both a:
- (a) Physical presence in the District of Columbia; and
 - (b) Legal presence in the District of Columbia.
- 5001.6 In the event the student's parents do not maintain the same residency and do not have a formal custodial agreement entered into by a court of competent jurisdiction, the student shall be presumed to be a resident, if the student is in the care or control of a parent who is a resident of the District.
- 5001.7 In the event the student's parents do not maintain the same residency but do have a formal custodial agreement entered into by a court of competent jurisdiction awarding physical custody and legal custody to one or both parents, the student shall be presumed to be a resident, if:
- (a) The student's parents share joint physical custody and joint legal custody of the student and at least one parent has established bona fide residency in the District;
 - (b) The student's parents share joint physical custody even if only one parent is awarded sole legal custody and the parent awarded sole legal custody has not established bona fide residency in the District but the parent not awarded legal custody has established bona fide residency in the District;
 - (c) The parent awarded sole physical custody and sole legal custody has established bona fide residency in the District; or
 - (d) The student's parents share joint legal custody even if only one parent is awarded sole physical custody and the parent awarded sole physical custody has not established bona fide residency in the District but the parent not awarded physical custody has established bona fide residency in the District.
- 5001.8 A homeless student is not required to establish residency as a condition of enrollment in a District public school. The appropriate school official shall notify OSSE when a student is homeless and shall work with OSSE as appropriate to provide the student with the available services and assistance.
- 5001.9 An undocumented student is not required to provide proof of citizenship as a condition of enrollment in a District public school.

5001.10 The residence of an adult student, who is eligible for admission to a DCPS or public charter school, is not the residence of the adult student's parents, custodian, guardian or other primary caregiver, unless adult student provides proof of physical presence within the residence of the parents, custodian, guardian or other primary caregiver.

5002 STUDENT RESIDENCY VERIFICATION

5002.1 The residency of each student seeking to attend a District public school or receiving funding from the District of Columbia to attend another school or educational program shall be verified consistent with this chapter, accordingly:

- (a) Upon initial enrollment, the person seeking to enroll the student shall establish residency in the District of Columbia, including an acknowledgement confirming responsibility for tuition payment for any period of time the student is determined to be a non-resident while enrolled and attending a District public school;
- (b) Each student attending a District public school or receiving funding from the District of Columbia to attend another school or educational program shall establish residency annually; and
- (c) The current LEA of enrollment shall verify each student's residency annually.

5002.2 Except as provided in subsection 5002.3, annual residency verification of a student's bona fide residence by the current LEA of enrollment shall include:

- (a) Completion of a residency verification form provided by OSSE;
- (b) Submission and review of documentation demonstrating physical and legal presence to establish District residency as provided in either subsections 5004.2 or 5004.3; and
- (c) Submission and review of other primary caregiver documentation, as required.

5002.3 Annual residency verification of a school age student, as defined in this Chapter, whose bona fide residence was verified by the current LEA of enrollment in a prior school year and who maintains bona fide residence in the District of Columbia, may be limited to the submission of a residency verification form, as provided by OSSE and completed by the student's parent, guardian, custodian, or other primary caregiver, which shall include the following:

- (a) Written confirmation that affirms that student's bona fide residence in the District has remained the same;

- (b) Appointment of OSSE, or a specifically designated District agency such as the Office of Tax and Revenue, as the representative authorized to verify student's residency status through an interagency data-sharing process; and
- (c) Consent to random verification of student's residency status through an interagency data sharing process.

5002.4 Annual residency verification pursuant to 5002.3 shall not prevent OSSE from seeking further documentation to verify the student's residency or from investigating the residency status of the student.

5002.5 Annual residency verification pursuant to 5002.3 shall not prevent school official(s), with reasonable basis, from seeking further documentation to verify the student's residency or from investigating the residency status of the student.

5002.6 Each student attending a District public school or receiving funding from the District of Columbia to attend another school or educational program shall re-establish residency in the District if the student's address of residency changes after October 5 of the school year and the current LEA of enrollment has completed the student's annual residency verification.

5002.7 A LEA shall verify District residency when a decision is made to fund a student at a school or educational program outside the District of Columbia public school system, prior to the student's initial enrollment in such a school or educational program, and annually thereafter.

5002.8 The residency of a student who attends a school or educational program other than a public school in the District of Columbia and whose tuition is paid by the District of Columbia, shall be verified in conformance with the procedures set forth in this chapter.

5002.9 At the time a student transfers from a District public school to another District public school, the receiving LEA is responsible for verifying residency and collecting the residency verification documents from the sending LEA, or from the student, student's parents, guardian, custodian or other primary caregiver directly if residency verification documentation submitted is not available from the sending LEA. The receiving LEA shall maintain the student's residency verification documentation.

5002.10 A student shall be permitted to attend and remain enrolled in a school while his or her residency verification status is pending.

5003 STUDENT RESIDENCY VERIFICATION: TIMING

- 5003.1 The residency of each student enrolled in a District public school shall be verified by the current LEA of enrollment, or its designee, not earlier than the date results of the District's Common Lottery system are released and not later than October 5th or ten (10) days of initial enrollment, whichever is later, for the school year that begins on or after July 1st of each year.
- 5003.2 An LEA may require students to submit residency verification prior to OSSE's October 5th deadline, but not later than OSSE's October 5th deadline, unless the student has enrolled in the school after October 5th, in which case the student shall submit residency verification within ten (10) days of initial enrollment.
- 5003.3 OSSE, or its designee, may investigate the residency status of a student or take other steps to verify the student's residency status if student fails to provide adequate documentation to establish residency by October 5th of the current school year or (10) days following enrollment, whichever is later.
- 5003.4 A student matched to the LEA through the Common Lottery system shall establish residency in the District of Columbia by the deadline set by the Common Lottery system for the school year that begins on or after July 1st of that same year. If the person enrolling the student is not able to establish residency by the LEA's initial enrollment deadline, the LEA may consider the student's space forfeited.

5004 STUDENT RESIDENCY VERIFICATION: METHODS

- 5004.1 A person seeking to enroll the student shall provide documentation in compliance with this Chapter and all relevant District of Columbia laws in order to establish residency.
- 5004.2 One (1) of the following items shall demonstrate both physical presence and legal presence to establish District residency for the purposes of this chapter:
- (a) Proof of payment of District personal income tax, in the name of the person seeking to enroll the student, for the tax period closest in time to the consideration of District residency;
 - (b) A pay stub issued less than 45 days prior to consideration of residency in the name of the person seeking to enroll the student that shows his or her District residency and evidence of the withholding of District income tax;
 - (c) Current official documentation of financial assistance received by the person seeking to enroll the student, from the District Government including, but not limited to Temporary Assistance for Needy Families (TANF), Medicaid, the State Child Health Insurance Program (SCHIP), Supplemental Security Income (SSI), housing assistance, or other governmental programs;

- (d) Confirmation, based upon completion and submission of a tax information authorization waiver form, by the District Office of Finance and Revenue of payment of District income taxes by the person seeking to enroll the student;
- (e) Current official military housing orders showing residency in the District of the person seeking to enroll the student; or
- (f) A currently valid court order indicating that the student is a ward of the District.

5004.3 If person enrolling the student is unable to provide one (1) of the items in subsection 5004.2, the person enrolling the student shall provide two (2) of the following items to demonstrate both physical presence and legal presence to establish residency in the District:

- (a) A current motor vehicle registration in the name of the person seeking to enroll the student and evidencing District residency;
- (b) A valid unexpired lease or rental agreement in the name of the person seeking to enroll the student, and paid receipts or canceled checks (for a period within 2 months immediately preceding consideration of residency) for payment of rent on a District residence in which the student actually resides;
- (c) A valid unexpired District motor vehicle operator's permit or other official non-driver identification in the name of the person seeking to enroll the student; and
- (d) Utility bills (excluding telephone bills) and paid receipts or cancelled checks (from a period within the 2 months immediately preceding consideration of residency) in the name of the person seeking to enroll the student that show a District residence address.
- (e) An LEA shall not accept any other documentation to establish or verify residency from a person seeking to enroll the student, unless approved by OSSE pursuant to D.C. Official Code § 38-311, or any superseding statute.

5004.4 Documentation to establish residency may be presented in the following manner:

- (a) Provided to the school principal or his/her designee by the person seeking to enroll the student, in person or by that person's appointed representative;

(b) Subject to implementation of an interagency data sharing process, pursuant to such a process with the consent of the person seeking to enroll the student; or

(c) Pursuant to other District-wide policies or procedures approved by OSSE.

5004.5 The principal or the principal's designated employee may conduct a home visit to determine residency of the person seeking to enroll the student if:

(a) The person seeking to enroll the student is unable to produce the documentation to establish District residency as required in subsections 5004.2 or 5004.3; and

(b) The person seeking to enroll the student provides written consent in a manner approved by OSSE.

5004.6 A home visit to determine residency shall be limited to obtaining evidence that verifies the person seeking to enroll the student and the student reside at the District address.

5005 STUDENT RESIDENCY VERIFICATION: OTHER PRIMARY CAREGIVER

5005.1 In addition to establishing his/her residency status, a primary caregiver, other than the student's parent, guardian or custodian, seeking to enroll a student in a District public school shall provide documentation that establishes his/her status as the student's other primary caregiver.

5005.2 A minor student's residency may be based upon that of an other primary caregiver if:

(a) The student resides with the other primary caregiver;

(b) The other primary caregiver provides both (1) care or control; and (2) substantial support, for the student; and

(c) The student's parents, guardians, or custodians have abandoned the child; or

(d) The student's parents, guardians, or custodians are unable to provide both (1) care or control; and (2) substantial support, for the student.

5005.3 The status as an other primary caregiver of each person seeking to enroll a student in a school shall be established through one of the following:

- (a) Previous school records indicating that the student is in the care of the caregiver;
- (b) Immunization or medical records indicating that the student is in the care of the caregiver;
- (c) Proof that the caregiver receives public or medical benefits on behalf of the student;
- (d) A signed statement, sworn under penalty of perjury, that he or she is the primary caregiver for the student; or
- (e) An attestation from a legal, medical or social service professional attesting to the caregiver's status relevant to the student.

5005.4 Documentation to establish or verify the status of other primary caregiver pursuant to subsection 5005.3(d) or 5005.3(e) shall be in the form provided by OSSE.

5005.5 An LEA shall not accept any other documentation to establish or verify the status of other primary caregiver from a person seeking to enroll the student, unless approved by OSSE pursuant to D.C. Official Code § 38-311, or any superseding statute.

5005.6 Notwithstanding subsection 5005.3, in limited exceptional circumstances, OSSE may determine a child is considered a resident upon the written request of an LEA or person seeking to enroll a student, pursuant to D.C. Official Code § 38-302(d), if OSSE substantially finds:

- (a) That the care or control and the substantial support are supplied by the person or persons with whom a child is residing and the parent, guardian or custodian of such child is unable to supply such care or control and substantial support; or
- (c) That such child is self-supporting.

5006 STUDENT RESIDENCY VERIFICATION: MONITORING

5006.1 OSSE may monitor a District public school to ensure proper verification of student residency. OSSE's monitoring may include scheduled and unscheduled visits to the District public school or local education agency.

5006.2 A District public school shall fully cooperate with authorized representatives of the Government of the District of Columbia, including OSSE, monitoring to ensure proper verification of student residency and shall provide them access to

facilities, staff, records, and other information related to the verification of student residency, upon request.

5007 NON-RESIDENT STUDENTS

5007.1 A non-resident student enrolled in a District public school shall pay non-resident tuition consistent with provisions of this chapter.

5007.2 An LEA may enroll a non-resident student after a determination is made by the LEA that space is available at a District public school because no qualified District resident is seeking admittance during the same period of time for the same grade at the relevant school location.

5007.3 Current non-resident students who have been approved to attend a District public school may remain until the terminal grade of that school without re-application if:

- (a) The current non-resident student has paid in full the total non-resident tuition by July 15 of each school year that the non-resident student has been in attendance; and
- (b) The current non-resident student's initial enrollment in the school was in accordance with all applicable policies, regulations and laws, and not based on false or fraudulent information.

5007.4 Upon completion of a terminal grade of a school, current non-resident students who have been approved to attend a District public school are not guaranteed a space at a feeder or other District public school for the following grade. All non-resident students who wish to attend a feeder or other District public school for the following grade shall seek to enroll in the feeder or other District public school.

5007.5 The following categories of non-resident students shall be approved to attend a District public school and required to pay non-resident tuition, in order to provide for continuity of instruction:

- (a) A student who is enrolled and attending the final grade level of a school who becomes a non-resident student during that school year; and
- (b) A student who would have re-enrolled in the final grade level of a school in September, but who has become a non-resident student during the school year or summer prior to that final grade year.

5007.6 Except for those non-resident students covered under Section 5007.3 and 5007.5, all non-resident students who wish to attend a District public school shall seek to

re-enroll in the school each year and the LEA shall determine each year whether space is available in accordance with this section.

5007.7 Upon request, the head of an LEA, a principal of a school, or his/her designee, shall provide to OSSE, or its designee, all waiting lists that were in effect or established during the time period(s) a non-resident student attended or was enrolled at its school or campus.

5007.8 A non-resident student attending a District public school shall be officially enrolled at the school and reported on the school's roster as a non-resident student.

5008 NON-RESIDENT STUDENTS: INVESTIGATIONS

5008.1 Upon request, the head of an LEA, a principal of a school, or its designee shall provide to OSSE, or its designee, any and all documentation necessary to facilitate non-residency investigations within five (5) business days.

5008.2 OSSE, or its designee, may investigate the residency status of a student or take other steps to verify the student's residency status if the student fails to provide adequate documentation to establish residency by October 5 of the current school year or (10) days following enrollment, whichever is later.

5008.3 Proof of District residency which appears to be satisfactory does not prevent OSSE or school officials from seeking further information to verify the student's residency or the other primary caregiver status of the adult enrolling the student; nor does it prevent OSSE, or its designee, from investigating the residency of the student or the other primary caregiver status of the adult.

5008.4 Upon request, the person seeking to enroll the student shall provide to OSSE, school officials, or their designee documentation to establish residency or necessary to facilitate non-residency investigations.

5008.5 OSSE or its designee shall investigate allegations of non-residency and summarize the results of the investigation in a written report.

5008.6 OSSE shall make the results of the investigation available to the LEA, the District of Columbia Office of the Inspector General and the District of Columbia Office of the Attorney General, upon request.

5009 NON-RESIDENT STUDENTS: FINDING OF NON-RESIDENCY AND NOTIFICATION

5009.1 Based on the information gathered through the investigation process, residency verification process and/or other means, OSSE may issue a finding that a student is not a resident of the District of Columbia.

5009.2 When OSSE issues a finding that a student is not a resident of the District of Columbia, OSSE shall provide the adult student or the parent, guardian, custodian or other primary caregiver of the minor student written notification of the finding and an opportunity for review as specified in this chapter. The written notification shall be mailed by OSSE to the last known address on file with the LEA for the student and to the out-of-District address of record.

5009.3 The written notification shall:

- (a) Include the basis for finding that the student is a non-resident;
- (b) Notify the student or student's parent, guardian, custodian or other primary caregiver that they have ten (10) business days from the date the written notification is issued to:
 - (1) respond to OSSE with requested information and documentation, if any; and
 - (2) request an administrative review of the non-residency finding by an impartial party or office assigned by OSSE to review such matters and render a final decision;
- (c) Explain that the student may remain enrolled at the school until a final administrative decision is made;
- (d) Explain that, unless OSSE receives a request for administrative review of the non-residency finding within ten (10) business days after the date of the written notification, the non-resident finding will become the final administrative decision, the student will be disenrolled from school, and tuition will be owed for the student; and
- (e) State that, in the event the student is voluntarily or involuntarily disenrolled from school before a final decision is made that the student was/is in fact a District resident, the District shall take action to collect a pro-rated amount of the student's non-resident tuition reflecting the student's time at the school while he/she was a non-resident if arrangements have not already been made with the LEA to pay the amount.

5010 NON-RESIDENT STUDENTS: ADMINISTRATIVE REVIEW OF CONTESTED RESIDENCY CASE AND FINAL DECISION

5010.1 Requests for an administrative review of an OSSE non-resident finding shall be filed with OSSE not later than ten (10) business days after the date the written notification of the non-resident finding is issued. If a request for review is not

received within a timely manner, and no corrective actions are confirmed to have been taken on behalf of the student, the finding of non-residency, and the proposed decisions to un-enroll the student from school and assess tuition, shall become the final administrative decision of the agency.

- 5010.2 OSSE shall refer a request for review of a contested residency case to an impartial hearing officer or administrative review office for a final administrative decision, unless OSSE determines that the contested residency case can be resolved through fact finding, interviews with parties and/or other means.
- 5010.3 OSSE shall refer a request for review of a contested residency case to the designated hearing officer or administrative review office by filing a copy of the request for review that it received, along with a statement that OSSE requests the hearing officer or administrative review office to hear and decide the case.
- 5010.4 In all contested residency cases, the hearing officer or administrative review office assigned to hear the case shall set the hearing date and issue the hearing notice.
- 5010.5 The presiding hearing officer or Administrative Law Judge shall issue a final decision in all contested residency cases assigned to him/her. The hearing officer or Administrative Law Judge's final decision shall be in writing and shall be the final administrative decision of OSSE. The statement of appeal rights required by Section 5010 shall be attached to or included in the written final administrative decision.
- 5010.6 In contested residency cases, the adult student or the parent, custodian, or guardian of the minor student who is claiming District of Columbia residency has the burden of proving their residency status for the purpose of deciding whether the student may enroll in and attend a District public school tuition-free.
- 5010.7 The presiding hearing officer or Administrative Law Judge shall be guided by the Office of Administrative Hearings Rules at 1 DCMR §§ 2905-2909, that are used in DCPS residency cases to address procedural issues, to the extent possible and as appropriate to encourage consistency across District public schools in the residency verification process. Where the Office of Administrative Hearings ("OAH") rules for DCPS residency cases do not address a procedural issue, the hearing officer or Administrative Law Judge shall be guided by the OAH Rules of Practice and Procedure. Where the OAH Rules of Practice and Procedure do not address a procedural issue, the hearing officer or Administrative Law Judge shall be guided by the District of Columbia Superior Court Rules of Civil Procedure to decide the issue.
- 5010.8 The office assigned by OSSE to hear contested residency cases may establish written Standard Operating Procedures to guide parties in contested residency cases through the process of an administrative review.

5010.9 In all contested residency cases, the currently enrolled student shall be allowed to continue to attend school without prepayment of tuition, pending the final administrative decision.

5011 NON-RESIDENT STUDENTS: APPEAL RIGHTS

5011.1 Every appealable decision issued by a hearing officer or Administrative Law Judge in a contested residency case shall include a statement of the appeal rights described in this section.

5011.2 A party to a contested residency case who is aggrieved by a decision of the hearing officer or Administrative Law Judge assigned to his/her case has 30 calendar days from the date the decision was issued to file an appeal to a state court of competent jurisdiction.

5011.3 The filing of an appeal or a petition for review does not automatically stay (or delay) the date a final decision goes into effect.

5011.4 Any party may file a motion to stay a final decision pending appeal. Any party may file a motion to stay the effective date of a final decision that has been issued. A motion for a stay shall include the reasons for granting the stay.

5011.5 In determining whether to grant a stay, the hearing officer or Administrative Law Judge may consider the following factors: whether the party filing the motion is likely to succeed on the merits, whether denial of the stay will cause irreparable injury, whether and to what degree granting the stay will harm other parties, and whether the public interest favors granting a stay.

5012 NON-RESIDENT STUDENTS: ACTION UPON FINAL DECISION

5012.1 OSSE shall provide notice of a final administrative decision in a matter involving non-residency to the LEA.

5012.2 Upon receiving notice from OSSE that a final administrative decision has been made that a student is a non-resident and an appeal of the final administrative determination has not been timely requested, the LEA shall:

- (a) Update the student records to reflect his or her appropriate residency, tuition, and enrollment status, including the following systems as appropriate: the LEA data systems; state level reporting and data systems including without limitation, the Student Longitudinal Educational Data (SLED) system and the Specialized Education Data System (SEDS); and Public Charter School Board data system;

- (b) Notify OSSE in the event that the student voluntarily or involuntarily un-enrolls from the school, so that the District may take action, including legal action, to collect tuition owed; and
- (c) Any action requiring withdrawal of a non-resident student with an Individual Education Program shall be consistent with the requirements of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* and other applicable federal and local laws and regulations.

5012.3 A matter involving non-residency may be referred by OSSE to the Office of the Attorney General or the Office of Inspector General for appropriate legal action if there is evidence that an individual knowingly supplied false information in connection to residency verification.

5013 NON-RESIDENT STUDENTS: TUITION PAYMENTS

5013.1 Adult non-resident students or the parents, guardians, custodians or other primary caregiver of a minor non-resident student attending a District funded school shall be subject to and responsible for non-resident tuition payments consistent with this chapter.

5013.2 Non-resident tuition payments shall be made payable to “*D.C. Treasurer*” and delivered to OSSE in a timely manner in accordance with OSSE’s tuition collection process or policy, or the applicable tuition payment agreement if one exists. OSSE shall provide the individual with confirmation that it has received the non-resident tuition payments.

5013.3 If the tuition payment of a current non-resident student who has been approved to attend a District public school is delinquent for a period of ninety (90) days or more, OSSE may exclude the non-resident student from attending a District public school based on non-payment.

5013.4 In the event a District public school has already received Uniform Per Student Funding Formula (“UPSFF”) funding for a student found as a non-resident, the District may withhold a portion of the school’s subsequent funding, equal to the amount of UPSFF funding previously distributed to the LEA for the student found as a non-resident.

5013.5 All agreements regarding the tuition payment for the non-resident student shall be in writing.

5013.6 A LEA shall maintain in a student’s permanent file, a written record of tuition payments and/or tuition payment agreements to be made available during the annual enrollment audit and upon request by OSSE or another government agency for each non-resident student.

5013.7 A matter involving non-residency may be referred by OSSE to the Office of the Attorney General for collection of tuition payments.

5014 NON-RESIDENT STUDENTS: TUITION RATES

5014.1 OSSE shall establish non-resident tuition rate determinations that reflect the amount necessary to cover all expenses incurred by the District public school as a result of the student's use of the school's services or the amount paid by the District of Columbia to fund the student's services received at a school or educational program with funding provided by the District of Columbia.

5014.2 Non-resident tuition rate determinations shall include the UPSFF amount, which includes all relevant weights associated with the UPSFF, the per pupil facilities allowance for public charter schools or other OSSE approved allowances as appropriate, and any other supplemental allocations.

5014.3 OSSE may establish non-resident tuition rate determinations that exceed the UPSFF but shall be the amount necessary to cover all expenses described in subsection 5013.1.

5099 DEFINITIONS

5099.1 For the purposes of this chapter, the following terms shall have the meanings ascribed:

Adult Student – A student who is eighteen (18) years of age or older, or who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.

Appointed Representative – An individual acting on behalf of a person, pursuant to his or her written authorization, in presenting to school or chartering authority officials documentation to establish or verify the District residency of the person seeking to enroll the student

Care or Control – A parent, custodian, guardian, other primary caregiver, or person with whom a child is residing with is exercising primary responsibility to provide the child with guidance, maintenance, and physical care as follows:

Guidance is participation in the responsibility for the child's development on a daily basis. Such participation includes, but is not limited to, attending school conferences, disciplining the child, participating in decisions concerning the child's well-being and involvement in the child's extracurricular activities;

Maintenance is providing necessities such as food, clothing and shelter; and

Physical care is providing continuous care for the child by performing tasks required in the child's daily life. Such tasks include, but not limited to, bathing, feeding, dressing, assuring medical attention will be received by the child, preparing meals, supervising the child's activities and assisting with other physical care needs.

Child – A person who is less than 18 years of age.

Chartering Authority – A District of Columbia entity authorized to grant charters for the establishment of public charter schools, pursuant to either the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.01 *et seq.*) (2012 Repl. and 2015 Supp.)), or the Public Charter School Act of 1996, effective May 29, 1996 (D.C. Law 11-135; D.C. Official Code § 1701.01 *et seq.*) (2012 Repl. and 2015 Supp.)) as amended.

Common Lottery – a single, random lottery that determines placement for new students at all participating schools, including but not limited to, public charter schools (PK3–12), DCPS out-of-boundary schools (PK3–12), all DCPS PK3 and PK4 programs, including in-boundary school; and DCPS selective citywide high schools (9–12) that is governed by the Common Lottery Board established by the Common Lottery Advisory Board Establishment Amendment Act of 2014, effective February 26, 2015 (D.C. Law 20-155; D.C. Code § 38-194) (2012 Repl. and 2015 Supp.)).

Custodian – A person to whom physical custody has been granted by a court of competent jurisdiction.

Custody – A determination by a court of competent jurisdiction providing for the legal custody and physical custody of a child.

District Funded School(s) – Includes any public school, public charter school, private or public school outside of the District of Columbia receiving funding from the District of Columbia.

District Law – In this chapter refers to the specific provisions of the District of Columbia Official Code referred to in this chapter, including without limitation Sections 38-301 through 312, and other applicable statutes or regulations.

District of Columbia Public Schools or DCPS – The District of Columbia Public Schools system, not including public charter schools.

District Public School(s) – Includes any school within the District of Columbia Public Schools system or any District of Columbia public charter school.

Enroll and Enrollment – A process through which a student obtains admission to a public or public charter school that includes, at a minimum the following stages:

- (a) Application by student to attend the school;
- (b) Acceptance and notification of an available slot to the student by the school;
- (c) Acceptance of the offered slot by the student (signified by completion of enrollment forms and parent signature on a “letter of enrollment agreement form”);
- (d) Registration of the student in the Student Information System (SIS) by school upon receipt of required enrollment forms and letter of enrollment agreement; and
- (e) Receipt of educational services, which are deemed to begin on the first official school day.

Guardian – A person who has been appointed legal guardian of a student by a court of competent jurisdiction.

Homeless – An individual who lacks a fixed, regular, and adequate nighttime residence. These individuals shall include pre-K age children, school-age children, or eligible adult students:

- (a) Sharing the housing of other persons due to loss of housing, economic hardship or similar reasons;
- (b) Living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodation;
- (c) Living in emergency or transitional shelters, (including D.C. transitional housing);
- (d) In a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation or human habitation;
- (e) Living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings;
- (f) Living in a hospital due to abandonment;

- (g) Migratory children, as defined in section 1309 of the Elementary and Secondary Education Act of 1965, who qualify as homeless because they live in circumstances described above; or
- (h) Unaccompanied youth, including youths who are not in physical custody of a parent or guardian, who qualify as homeless because they live in circumstances described above.

Legal custody – A determination by a court of competent jurisdiction that a parent has legal responsibility for a child, which includes the right to make decisions regarding a child's health, education, and general welfare.

Legal presence – The jurisdiction of taxing authorities and the locality where a person seeking to enroll a student may exercise the privilege of voting and other legal rights and privileges.

Local Educational Agency or LEA – Pursuant to 20 USCS § 7801(26)(A), a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

Office of the State Superintendent of Education or OSSE – The state level agency established by Chapter 26 of Title 38 of the D.C. Official Code.

Other Primary Caregiver – The person other than a parent or court appointed custodian or guardian who is the primary provider of care and support to a child who resides with him or her, and whose parent, custodian, or guardian is unable to supply such care and support and submits evidence that he or she is the primary caregiver of the student in the manner provided in D.C. Official Code § 38-310 and this Chapter.

Parent – The natural parent, stepparent, or parent by adoption who has custody or control of a student, including joint custody.

Pre-K age child – A child who is (i) three (3) years of age on or before September 30 of the program year for which the child is being enrolled; (ii), four (4) years of age; or (iii) five (5) years of age after September 30 of the program year for which the child is being enrolled.

Physical custody – A determination by a court of competent jurisdiction of a child's living arrangements including where the child resides.

Physical presence – The actual occupation and inhabitation of a place of abode with the intent to dwell for a continuous period of time.

Public Charter School – The District of Columbia school authorized by a chartering authority.

Reside or resident – To establish both a physical presence and legal presence as defined in this chapter.

School – A public charter school, a school within the District of Columbia Public Schools system, a school in another state or a nonpublic school in the District of Columbia enrolling a student funded by the District of Columbia.

School age student – A child who is between five (5) years of age on or before September 30 of the current school year and eighteen (18) years of age.

Support – A parent, custodian, guardian, other primary caregiver, or person with whom a child is residing who is exercising primary responsibility to provide the child with financial resources for the child's livelihood.

Uniform Per Student Funding Formula or UPSFF – The amount of funding provided for each student attending a public school in the District of Columbia pursuant to section 2401 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321-107; D.C Official Code § 38-1804.01).

Waiting List – A roster of students maintained by the LEA or school of students seeking enrollment.

Ward – A child who is a District of Columbia foster child, either living in or outside of the District, or a child who is in the custody of a District of Columbia public child welfare agency or juvenile justice system.

The following Subsections and Sections of Chapter 20, ADMISSIONS OF STUDENTS. of Title 5-E DCMR, ORIGINAL TITLE 5 are hereby deleted in their entirety:

Subsection 5E-2000.2

Subsection 5E-2000.4

Subsection 5E-2000.5

Subsection 5E-2002.11

Subsection 5E-2002.15

Subsection 5E-2002.16

Sections 5E-2006 through 5E-2009

Persons desiring to comment on this ANPR may testify at the stakeholder engagement session to be held at the Office of the State Superintendent of Education, 3rd Floor-Grand Hall, 810 1st Street NE, Washington, D.C. 20002 on September 22, 2016 from 1:00 p.m. to 2:00 p.m.

Individuals wishing to testify at the stakeholder engagement session should contact Tiffany Oates, at 202-727-9882 or by e-mail at Tiffany.Oates@dc.gov. Testimony will be limited to a total presentation time of three (3) minutes at each engagement session.

Persons may also file comments in writing. All written comments must be received by October 24, 2016. Persons desiring to comment on this advance notice should file comments in writing by mail or hand delivery to the Office of the State Superintendent of Education, Attn: Jamai Deuberry re: “ANPR – Residency Verification for Public Schools and Public Charter Schools”, 810 First Street, NE 9th Floor, Washington, DC 20002 or via email addressed to: ossecomments.proposedregulations@dc.gov with subject “ANPR – Residency Verification for Public Schools and Public Charter Schools.”