

# MEMORANDUM

**To:** Joseph Filapek  
Reaching Across Illinois Library System (RAILS)

**From:** Julie A. Tappendorf

**Subject:** Calculation of Fee for Non-Resident Cards for Students

**Date:** February 18, 2015

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You asked us to provide you with an opinion as to the calculation of the fee for non-resident cards for students. We understand this issue has been raised by a number of RAILS members.

The answer depends on how a student obtains a non-resident library card. There is one method for calculating a non-resident fee for students who apply for non-resident cards on an individual basis (discussed in subsection A) and another method if the student is covered by an intergovernmental agreement between the library and school district (discussed in subsection B).

## **A. Obtaining a Non-Resident Library Card on an Individual Basis**

Under Illinois law, both public libraries and library districts are authorized to provide non-residents (those who live outside of the public library service area or library district) with library cards. Libraries are required to charge a nonresident fee “at least equal to the cost paid by residents of the city, incorporated town, village or township” (for public libraries) and “at least equal to the cost paid by residents of the district” (for library districts). See 75 ILCS 5/7-4(12); 75 ILCS 16/30-55.60. Both statutes provide that the cost is to be determined according to the formula established by the Illinois State Library. Those rules are contained in the Illinois Administrative Code (“JCAR rules”)

Pursuant to the JCAR rules, there are three options for a library to use to determine the fee that should be imposed for non-resident library cards issued on an individual basis: (1) a general mathematical formula that is based on the cost of service per capita (library tax income divided by local population); (2) application of the library’s local tax rate to the non-resident’s tax bill; or (3) adoption of an average non-resident fee for the system area. Whatever method is used to determine the fee, that fee must be equitable and proportionate to the fee paid by residents.

Thus, if a student applies for a non-resident library card on an individual basis, he or she would be subject to the fee calculated in accordance with one of these three formulas.

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**B. IGA with School District.**

There is an alternative to each student applying for a non-resident library card on an individual basis. A school district and library can enter into an intergovernmental agreement (“IGA”) to provide non-resident library services to the school district. The IGA must establish a non-resident fee for the cards that is based on “the principle of equity of costs.” Although that phrase is not defined in state statute or the JCAR rules, it has been interpreted to mean that the non-resident fee should be calculated such that the non-residents that will be served by the library are paying a fee equivalent to what residents pay through their property taxes.

It is a little more difficult to determine how much a school district would pay collectively through the IGA to serve its students. Some of those students may actually be residents of that library service area or district, and should be excluded in calculating an appropriate IGA fee as they are already paying taxes and receive library service. So, in calculating an appropriate fee, the school district and library might first determine approximately how many students are non-residents, and then apply a similar method of calculating the fee for those non-resident students as is required to establish an individual non-resident fee as discussed under subsection A of this memorandum.

The state interprets the non-resident fee JCAR rules to prohibit “free” library cards for students. Based on the numerous provisions in the JCAR rules requiring non-resident fees to be set at a cost that is “equitable” to the taxes imposed on residents, it would probably be unreasonable to impose only a token payment on non-resident cards for students through the IGA – the issue is one of fairness to the residents who pay taxes for these services.

On the other hand, there does not appear to be any prohibition on the parties agreeing to other forms of compensation for the non-resident services. For example, a school district might agree to non-monetary consideration for the non-resident library services such as use of school property or provision of other services that the library might otherwise have to pay for. The IGA should spell out, however, what type of consideration the school is paying to the library in exchange for the non-resident library services, and whatever form that consideration takes, it should be equitable to what residents pay in taxes.

In sum, this is not a clear-cut issue either in the statute or in the JCAR rules. The one thing that does seem clear, however, is that the JCAR rules adopted by the state are intended to ensure that non-residents pay their ‘fair share’ to the library in order to receive services on a level similar to residents who are subject to library taxes.