



Back to school primer: Right to attend and custody

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We're getting the questions already – those sticky questions that come up throughout the year but especially right before the school year begins: “Mom left kids with a resident of the district and resident wants to enroll the kids” or “Dad wants to enroll his kids. He’s on the birth certificate, but he was never married to mom.” While the situations seem to get more complex each year, knowing the basic rules governing which school district a child has the right to attend and how custody is determined should help guide you to answers – even to those sticky questions. Here’s a primer on those basic rules.

General rules for which school district a child has the right to attend

Ohio law sets forth the rules for which school district a child has the right to attend. [1] The general rule is that a child is entitled to attend tuition-free in the district where the child’s parents reside. [2] There are multiple exceptions to this rule, and some of the more common ones are: [3]

- Child who is the subject of a Grandparent Power of Attorney or Caretaker Authorization Affidavit – attends the district where the child lives with his/her grandparent. [4]
- Child who requires special education and who does not reside in the district where the child’s parent resides – attends the district where the child resides - regardless of custody. [5]
- Child in the custody of a governmental agency (such as Children Services or Jobs & Family Services) or a non-

parent – attends the district where the child resides. [6]

- Foster children often move from one foster home to another. Under the Every Student Succeeds Act (ESSA), foster children must remain in the school where the child was first enrolled at the time of foster placement – unless it is not in the child's best interest. [7]
- Child with a parent in the military – entitled to attend the district where the child is residing with the non-parent appointed as the parent's agent under a military power-of-attorney [8] or may continue to attend the school where the parent was residing before being called to active duty. [9]
- Child over the age of 18 who supports him/herself by his/her own labor – entitled to attend the district in which the child resides. [10]
- Homeless children or unaccompanied youth – entitled to attend in either the last school attended when child had permanent housing/where last enrolled or the district where the temporary shelter is located. [11]
 - Unaccompanied youth has a very broad definition. It includes children and youth under twenty-one who are not in the physical custody of a parent or guardian due to reasons such as running away from home, being kicked out of home, or being sent to live with family or friends after the parent is evicted.

Custody documents must be presented upon enrollment

At the time of initial entry into a public school, a student must present, among other things, a certified copy of any court order or decree that allocates parental rights and responsibilities for and designates the residential parent and legal custodian of the child. [12] These documents are key to determining which school district the child of divorced parents is entitled to attend, because, as set forth above, the general rule is that a child is entitled to attend tuition-free in the district where the child's parents reside. [13] When there is a divorce, dissolution or legal separation, the "parent" is defined as the parent who is designated the residential parent and legal custodian of the child in that court order. [14] But not all custody documents stem from a divorce – the following sets forth the types of custody orders that may be presented.

Establishing custody – court documents or the "fall back" rule

In Ohio, custody may only be granted via a court order, with one exception:

- Domestic Relations Court: Issues divorce decrees/shared parenting agreements. If one parent is given sole custody, then the child may attend school only where that custodial parent resides. If there is a shared parenting agreement, the child may attend school where either parent resides, unless only one parent is designated as residential parent for school placement purposes.
- Juvenile Court: Issues custody orders in situations of neglect, dependency or delinquency. More often than not, custody is vested with children services, at least initially. Custody may also be given to a non-parent. This may be on a temporary or permanent basis.
- Probate Court: Issues guardianships over "the person." This usually occurs when the parent agrees to give guardianship of the child to another person.
- The "fall back" rule for unmarried females: If there is no court-ordered custody and the parents are unmarried, the mother is considered the sole residential parent and legal custodian – until a court determines otherwise. [15]

So, what are the answers to those sticky questions?

In true lawyer form, the answer to the two questions posed at the beginning of this article is... “it depends.” For the mom who left her kids with a resident of the district, this could be an unaccompanied, homeless youth situation – so you will have to make further inquiry to gather more facts. To help determine whether a child is an unaccompanied, homeless youth, refer to Appendix 9.A of the [U.S. Department of Education’s National Center for Homeless Education Homeless Liaison Toolkit](#). What about the dad, never married to mom, who wants to enroll his kids? As you learned above, mom would be considered the sole residential parent and legal custodian. You may want to direct dad to go to court to establish paternity and/or gain legal custody. If he does, the children may be admitted tuition-free, for up to sixty days. [16] Of course, if any of the children require special education, they should be enrolled – regardless of their custodial status – in the district where the child resides. [17]

[1] R.C. 3313.64.

[2] R.C. 3313.64(B)(1).

[3] There are additional exceptions not addressed in this article. The reader is encouraged review all the relevant laws and to seek guidance if there is a question concerning student attendance, custody and tuition.

[4] R.C. 3313.64(A)(1)(b) and (B)(1). Grandparent POAs and Affidavits are governed by R.C. 3109.51-3109.73.

[5] R.C. 3313.64(B)(2)(c).

[6] R.C. 3313.64(B)(2)(a).

[7] The U.S. Departments of Education and Health and Human Services recently jointly issued [a letter and non-regulatory guidance](#) that provide detailed information on the responsibilities of school districts under ESSA.

[8] R.C. 3313.64(F)(14).

[9] R.C. 3313.64(M). This rule applies to parents in the National Guard or Reserves. The child may continue to attend, regardless of where the child is living while the parent is on active duty (the parent must continue to be a resident of that district).

[10] R.C. 3313.64(F)(1). The Ohio Attorney General has opined that for a student to be self-supporting, the student must be able to “finance or otherwise facilitate the furnishing of the necessities of life, including food, shelter, and clothing, by means of their own physical or mental effort.” Ohio Atty. Gen. Op. 2014-026.

[11] R.C. 3313.64(F)(13); 42 U.S.C. 11431 et seq.

[12] R.C. 3313.672(A).

[13] R.C. 3313.64(B)(1).

[14] R.C. 3313.64(A)(1)(a).

[15] R.C. 3109.042.

[16] See R.C. 3313.64(E).

[17] See R.C. 3313.64(C)(1).

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