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Student attendance and custody issues

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The beginning of the school year is a great time to focus on the rules that govern student attendance. Each year, the enrollment process triggers many tough questions about where a student can legally attend school. This process requires an understanding of the applicable legal requirements and the specific procedures established in your district. For that reason, we thought it would be a good idea to start the school year with an updated back-to-school primer on student attendance and custody issues.

Student attendance rights: Which school district must enroll the student?

The framework for determining which school district a child has the right to attend is established by [Ohio Revised Code Section 3313.64](#). All children of school age in Ohio are entitled to attend, without charge, the public schools of their "school district of residence." The general rule is that the district of residence is the school district in which the child's parents reside;¹ however, there are multiple exceptions to this general rule.

Before we review some of the more common exceptions, it is important to consider the definition of "parent." In the context of student attendance, the parent means either the natural or adoptive parent, unless the parents are divorced or separated or their marriage has been dissolved or annulled, in which case the parent means the

parent who is the residential parent and legal custodian of the child. If the parents are unmarried and there is no court-ordered custody, the mother is considered to be the sole residential parent and legal custodian space until the court decides otherwise (or unless the mother has been convicted of rape or sexual battery and has been declared to be the parent of a child born as a result of rape or sexual battery).²

If the child is in the legal custody of a government agency, the parent is defined as the natural or adoptive parent who has the residual parental rights or who has been divested of residual parental rights. When custody is awarded jointly to both parents under a "shared parenting plan," both parents are deemed to be the child's residential parent and legal custodian, regardless of where or with whom the child is residing. Unless one parent is designated as residential parent for school placement purposes, the effect of the shared parenting plan is that the child may be able to attend school tuition free in the district in which either parent resides.

Common exceptions to the general rule for student attendance are as follows:³

- Special education: A child who requires special education and who does not reside in the district where the child's parent resides has a right to attend school in the district in which the child resides.⁴
- Grandparent Power of Attorney or Caretaker Authorization Affidavit: A child who is the subject of a Grandparent Power of Attorney or Caretaker Authorization Affidavit may attend school in the district where the child lives with his/her grandparent.⁵
- Child in the custody of a governmental agency (such as Children Services or Job & Family Services) or a non-parent may attend the district where the child resides.⁶ Note there are special rules for foster children. Under the Every Student Succeeds Act (ESSA), foster children must remain in their school of origin (the school where the child was first enrolled at the time of foster placement) unless remaining in that school is not in the child's best interest.⁷
- Military children: A child with a parent in the military is entitled to attend school in the district where the child is residing with the non-parent appointed as the parent's agent under a military power-of-attorney⁸ or may continue to attend the school where the parent was residing before being called to active duty.⁹
- Adult student: A student over the age of 18 who supports him/herself by his/her own labor is entitled to attend the district in which the child resides.¹⁰
- Homeless children or unaccompanied youth are 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 Note that the term "unaccompanied youth" has a very broad definition. It includes children and youth under 21 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.

Documentation: What records should be provided upon enrollment?

[Ohio Revised Code Section 3313.672](#) provides that the following documents must be presented at the time of a student's initial enrollment:

- Any records from the school most recently attended;
- A certified copy of an order or decree, or modification of an order or decree, allocating parental rights and responsibilities for the care of a child and designating a residential parent and legal custodian of the child, if that type of order has been issued, a copy of a power of attorney or Caretaker Authorization Affidavit (if either have been issued); and
- A birth certificate or comparable certificate issued pursuant to the laws of another state or jurisdiction. The statute provides examples of what may be accepted in lieu of the birth certificate. See [R.C. 3313.672\(A\)\(1\)\(a\)-\(e\)](#).

The law requires that any parent who has been awarded custody in an action for a divorce, annulment or dissolution to notify the child's school of the custody arrangements by providing the school with a certified copy of the custody order or decree at the time of enrollment or whenever such order or decree is made. The parent must also notify the school of any modifications which are made thereafter to the custody order or decree.

As you prepare for the 2017-18 school year, keep in mind that in Ohio, custody may only be granted via a court order, with one exception. Therefore, the right to attend school tuition-free in a particular district cannot be created through the use of affidavits or notarized statements, except those in connection with the Grandparent Caretaker Law. The types of court orders you will likely see will depend on the issuing court. For example, the county domestic relations court will issue divorce decrees and shared parenting agreements. Juvenile courts also issue custody orders in situations of neglect, dependency or delinquency. In these situations, custody is often vested with a governmental agency, at least initially. Custody may also be given to a non-parent on a temporary or permanent basis. Probate courts also issue legal guardianships. The effect of a legal guardianship on the right of a child to attend school in a particular district will depend on the nature of the rights given to the guardian.

The legal requirements that govern a student's right to attend school in a particular district are complex. However, your district can best handle these complexities by encouraging those who are responsible for student enrollment to review the legal standards and procedures established by your board policies and ensure that the enrollment documentation provided by parents is complete and contains the most current court orders, as applicable.

¹ R.C. 3313.64(B)(1).

² R.C. 3109.042.

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

⁴ R.C. 3313.64(B)(2)(c).

⁵ R.C. 3313.64(A)(1)(b) and (B)(1). Grandparent POAs and Affidavits are governed by R.C. 3109.51-3109.73.

⁶ R.C. 3313.64(B)(2)(a).

⁷ These provisions took effect December 10, 2016. The U.S. Departments of Education and Health and Human Services issued a [letter and non-regulatory guidance](#) in June 2016 that provides detailed information on the responsibilities of school districts under ESSA. The Ohio Department of Education has also issued its own [guidance](#) to assist school districts in implementing the federal requirements at the local level.

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.