



Legal update: Student attendance and custody issues

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Did you see the movie *Labyrinth* as a child? Or more recently, *Maze Runner*? These films come to mind when navigating the complex statutes surrounding student attendance and custody issues. Even the most seasoned school administrator can find these statutes challenging. While this article will not cover every unique circumstance posed in the coming school year, it summarizes many of the most common issues that arise surrounding residency, enrollment and tuition.

Who is the parent?

In general, the residence of a child for school purposes is the same as the residence of his or her parent.¹ In this context, “parent” means either of the natural or adoptive parents, unless the parents are separated or divorced or their marriage has been dissolved or annulled. In that case, “parent” means the residential parent and legal custodian of the child.² If parents have “shared parenting” rights, the child is entitled to attend school in the district where the mother or father resides, unless the divorce decree says otherwise.

Every year, there are questions about the residency of students whose parents have never been married. Under Ohio law, an unmarried female who gives birth to a child is the “sole residential parent and legal custodian” of the child, until a court declares otherwise.³ Thus, in this situation, if the mother enrolls the student and lives in the district, there is no issue as to who the parent is for school purposes. However, if the unmarried father enrolls the student, there is a problem, even if the unmarried father is listed on the birth certificate, because Ohio’s domestic relations law requires some court action to give unmarried fathers custodial rights. In this situation, a district can tell the father to go to court and get an order recognizing his paternity and designating him as legal custodian. In the meantime, the district may enroll the child for 60 days upon a notarized statement that

the father has initiated those proceedings.⁴

What documentation is required?

Once a district has determined that a student is entitled to enroll in the district, various statutes originally enacted under Ohio's "Missing Child Law" dictate reporting obligations and the types of documentation required for enrollment. For instance, the law requires school officials to request from school photographers a free wallet-size photo of every child.⁵ Further, a school district must immediately notify the attorney general and law enforcement when a missing child attends school.⁶ And the board of education must adopt a policy for notification of parents when a child is absent from school.⁷

In addition, a school district must notify law enforcement when a child without a birth certificate or school records is enrolled (the 14-day requirement)⁸ At the time of enrollment, Ohio Revised Code Section 3313.672 provides that the following must be presented at the time of a student's initial enrollment:

- Any records given to him by prior school
- A certified copy of current custody order
- A copy of a power of attorney or caretaker authorization affidavit, if applicable
- A birth certificate

In lieu of a birth certificate, the district shall accept any of the following:

- A passport or attested transcript of a passport filed with a registrar of passports at a point of entry of the United States showing the date and place of birth of the child
- An attested transcript of the certificate of birth
- An attested transcript of the certificate of baptism or other religious record showing the date and place of birth of the child
- An attested transcript of a hospital record showing the date and place of birth of the child A birth affidavit⁹

Within 24 hours of a student's entry, the district shall request the student's official records from the prior school of attendance. The principal or superintendent must notify local law enforcement that the student may be a missing child if any of the following apply:

- The prior school has no record of the child's attendance
- The official records are not received within 14 days
- The student does not present the birth certificate or one of the acceptable substitutes

Finally, school districts must adhere to specific protocol for the marking and handling of student records. (E.g., when a district is notified that a missing child report has been filed regarding a student, the school must mark that student's records in a specific way.)¹⁰

However, there are special rules applicable to homeless students or "unaccompanied youth." These students may not be denied enrollment because of a failure to provide proof of residency or a birth certificate, a failure to meet immunization requirements or other problems related to homelessness.¹¹ Also note, the term "unaccompanied youth" has a very broad definition.¹² 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.

Further, the U.S. Department of Justice and U.S. Department of Education issued a [Dear Colleague Letter](#) dated May 8, 2014, which has not been rescinded, providing that a school district may not request information with the purpose or result of denying access to public schools on the basis of race, color or national origin; inquire about a student's citizenship or immigration status or that of his or her parents/guardians; or deny enrollment because the student has not provided a social security number.

Can the student attend tuition-free?

The most common situation is that a parent and child are living in the same household and the child may attend school in the district tuition-free. However, there are several exceptions under the law for a tuition-free education. While the following is not an exhaustive list, some of the more common situations include:

- Grandparent power-of-attorney or caretaker authorization affidavit: child has to be living with a grandparent in the district¹³
- Child in custody of a governmental agency (such as Children’s Services or Job & Family Services) or a non-parent: child may attend the district where the he/she resides¹⁴
- Emancipated 18-year-old: lives apart from parent and supported by his/her own labor¹⁵
- Child with parent in the military: child may attend in the district where he/she is residing with the non-parent appointed as the parent’s agent under a military power-of-attorney¹⁶ or may continue to attend the school where the parent was residing before being called to active duty¹⁷
- Homeless child: when a child/family loses permanent housing due to economic reasons. If the student is living in temporary housing/shelter/or doubling up, he/she can attend either district of origin or within the district he/she is currently living.¹⁸

In certain situations, a district must enroll a student but may charge tuition. For instance, children who require special education must be admitted to the district where the child is residing, regardless of who has custody. The school district of residence that is responsible for tuition is the district where the child’s parent resides.¹⁹ The rules on charging tuition in these situations can be complex and are beyond the scope of this article.²⁰ The reader is encouraged to seek guidance if there is a question concerning attendance and tuition.

As you progress through the current school year and become surrounded in a maze of issues related to residency and custody, be sure to review your district’s enrollment policies. Also, remind those staff members responsible for enrollment of the enrollment policies to ensure they are receiving the appropriate paperwork, and making exceptions, when mandated by law.

This article was reprinted from the “Legal Update” that went out to OASSA (Ohio Association of Secondary School Administrators) members. The Legal Update is intended to provide general information and is not to be considered legal advice for any specific problem or issue. If specific legal advice is sought, please consult with an attorney.

¹ R.C. 3313.64(B)(1).

² R.C. 3313.64(A)(1).

³ R.C. 3109.042.

⁴ R.C. 3313.64(E).

⁵ R.C. 3319.322.

⁶ R.C. 109.65(D).

⁷ R.C. 3313.205(A)(4).

⁸ R.C. 3313.672.

⁹ R.C. 3313.672(A)(1)(a)-(e).

¹⁰ R.C. 3313.672(D).

¹¹ 42 U.S.C. 11432(g)(3)(C)(1).

¹² 42 U.S.C. 11434(a)(6).

¹³ R.C. 3313.64(A)(1)(b) and (B)(1). Grandparent POAs and affidavits are governed by R.C. 3109.51-3109.73.

¹⁴ R.C. 3313.64(B)(2)(a). 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.

¹⁵ The Ohio Attorney General published opinion 2014-026, which provides further guidance as to what it means for students to "support themselves by their own labor." Specifically, the opinion states this phrase means 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. The phrase does not apply to a person who depends upon another for support."

¹⁶ R.C. 3313.64(F)(14).

¹⁷ R.C. 3313.64(M).

¹⁸ R.C. 3313.64(F)(13); 42 U.S.C. 11431 et seq.

¹⁹ R.C. 3313.64(C)(1).

²⁰ Recently, the Ohio Attorney General published a new opinion regarding responsibility for the costs of educating children, including those receiving special education services, placed out-of-state by a public children's services agency. See O.A.G. 2018-016.

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