

LEGAL UPDATE ON UNFAMILIAR RESIDENCY ISSUES

2011-2012 School Year

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I. THE RESIDENCY FRAMEWORK

A. RESIDENCY DEFINED

“Residency” is not defined in R.C. 3313.64. However, Ohio courts have found indications of residency to include “being physically present in a household for significant periods and activities such as eating, sleeping, relaxing, and receiving mail.” Black’s Law Dictionary defines “reside” as “live, dwell, abide, sojourn, stay, remain [or] lodge . . . to have one’s residence. . . .” “Residence” is defined as the “place where one actually lives or has a home; a person’s dwelling place or place of habitation; an abode; house where one’s home is; a dwelling house. . . .”

Massie v. Lexington Local Schools Bd. of Edn. (July 3, 2001), Fifth App. No. 00-CA-101, 2001 Ohio App. LEXIS 3269, 6 (citations omitted).

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B. TUITION FREE EDUCATION

1. When the Child Resides With a Parent

A child between the ages of five and twenty-two years of age (i.e., 5 through 21) **and** any preschool child with disabilities between the ages of three and twenty-two years of age (i.e., 3 through 21) has the right to a tuition free education in the school district where the child's parent resides. R.C. 3313.64(B)(1) (defining tuition free age). See, also, R.C. 3313.64(A)(7) (defining the term "handicapped preschool child"). For student **residency purposes**, the term "parent" refers to:

- (a) *Except as provided in division (A)(1)(b) of this section, "parent" means either parent, unless the parents are separated or divorced or their marriage has been dissolved or annulled, in which case "parent" means the parent who is the residential parent and legal custodian of the child. When a child is in the legal custody of a government agency or a person other than the child's natural or adoptive parent, "parent" means the parent with residual parental rights, privileges, and responsibilities. When a child is in the permanent custody of a government agency or a person other than the child's natural or adoptive parent, "parent" means the parent who was divested of parental rights and responsibilities for the care of the child and the right to have the child live with the parent and be the legal custodian of the child and all residual parental rights, privileges, and responsibilities.*
- (b) *When a child is the subject of a power of attorney executed under sections 3109.51 to 3109.62 of the Revised Code, "parent" means the grandparent designated as attorney in fact under the power of attorney. When a child is the subject of a caretaker authorization affidavit executed under sections 3109.64 to 3109.73 of the Revised Code, "parent" means the grandparent that executed the affidavit.*

R.C. 3313.64(A)(1).



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WARNING!

The above definition of “parent” applies to residency for school purposes only. It has no effect on the definition of “parent” for special education purposes. That definition is governed by R.C. 3323.01(I) and (M), which provide that:

- (I) *“Parent” of a child with a disability, except as used in sections 3323.09 and 3323.141 of the Revised Code, means:*
 - (1) *A natural or adoptive parent of a child but not a foster parent of a child;*
 - (2) *A guardian, but not the state if the child is a ward of the state;*
 - (3) *An individual acting in the place of a natural or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child’s welfare;*
 - (4) *An individual assigned to be a surrogate parent, provided the individual is not prohibited by this chapter from serving as a surrogate parent for a child.*

- (M) *“School district of residence,” as used in sections 3323.09, 3323.091, 3323.13, and 3323.14 of the Revised Code, means:*
 - (1) *The school district in which the child’s natural or adoptive parents reside;*
 - (2) *If the school district specified in division (M)(1) of this section cannot be determined, the last school district in which the child’s natural or adoptive parents are known to have resided if the parents’ whereabouts are unknown;*
 - (3) *If the school district specified in division (M)(2) of this section cannot be determined, the school district determined under section 2151.362 of the Revised Code, or if no district has been so determined, the school district as determined by the probate court of the county in which the child resides.*
 - (4) *Notwithstanding divisions (M)(1) to (3) of this section, if a school district is required by section 3313.65 of the Revised Code to pay tuition for a child, that district shall be the child’s school district of residence.*

See Grandparent/Caretaker Checklist.



Grandparent/Caretaker Checklist

- The student is under 18 years of age.
- The student resides with the grandparent/caretaker (“GC”).
- The GC resides in your school district.
- The GC produces a power of attorney/caretaker authorization affidavit that is **identical in form and content** to R.C. 3109.53/R.C. 3109.66.
- The power of attorney/caretaker authorization affidavit is signed by the parent/guardian/custodian (“PGC”) **and** the GC.
- All signatures on the power of attorney/caretaker authorization affidavit are notarized.
- The power of attorney/caretaker authorization affidavit is created for the best interest of the student as determined by the PGC. This cannot be for academic or interscholastic purposes.
- The power of attorney/caretaker authorization affidavit was filed in your juvenile court **no later than five days** after it was executed.
- The school requested filing verification from the court. This is not required, but is highly recommended.
- The school is unaware of:
 - any guardianship/adoption proceedings;
 - any temporary/permanent/legal custody proceedings;
 - any planned permanent living request;
 - any ex parte emergency custody order;
 - any divorce/dissolution/legal separation/annulment/allocation of parental rights and responsibilities proceedings;
 - any revocation of the power of attorney/caretaker authorization affidavit by PGC; or
 - any termination of the power of attorney/caretaker authorization affidavit by court.

A power of attorney/caretaker authorization affidavit lasts for one year and places the GC in the shoes of the PGC with respect to all school related matters.

For students with disabilities, invitations to meetings should be sent to the parents if possible.



MARRIED PARENTS

- Example 1: The mother and father are married and reside in School District A. The non-disabled, non-emancipated child resides with the mother and father. The child is entitled to tuition free enrollment in School District A.
- Example 2: The mother and father are married. The mother resides in School District A, and the father resides in School District B. The non-disabled, non-emancipated child resides with the mother **only**. The child is entitled to tuition free enrollment in School District A **and** School District B. **CAUTION.**
- Example 3: The mother and father are married. The mother resides in School District A, and the father resides in School District B. The non-disabled, non-emancipated child resides with both the mother **and** the father. The child is entitled to tuition free enrollment in School District A **and** School District B. **CAUTION.**



DIVORCED/LEGALLY SEPARATED PARENTS

- Example 4: The mother and father are divorced/legally separated and reside in School District A. Both parents have legal custody of the non-disabled, non-emancipated child. The shared parenting agreement declares the father the residential parent for school purposes. The child resides with the father. The child is entitled to tuition free enrollment in School District A.
- Example 5: The mother and father are divorced/legally separated. The mother resides in School District A and the father resides in School District B. Both parents have legal custody of the non-disabled, non-emancipated child. The shared parenting agreement declares both parents residential parents for school purposes. The child resides with the father. **CAUTION** The child is entitled to tuition free enrollment in School District A and School District B.
- Example 6: The mother and father are divorced/legally separated. The mother resides in School District A and the father resides in School District B. Only the father has legal custody of the non-disabled, non-emancipated child. Only the father is the residential parent. The child resides with the mother. The child is entitled to tuition free enrollment in School District B.



2. An interesting issue arises when parents never married:

An unmarried female who gives birth to a child is the sole residential parent and legal custodian of the child until a court of competent jurisdiction issues an order designating another person as the residential parent and legal custodian. A court designating the residential parent and legal custodian of a child described in this section shall treat the mother and father as standing upon an equality when making the designation.

R.C. 3109.042.



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PARENTS WHO NEVER MARRIED

- Example 7: The mother and father were never married and reside in School District A. There is no court order declaring the father to be a residential parent or legal custodian. The non-disabled, non-emancipated child resides with the mother and father. The child is entitled to tuition free enrollment in School District A.
- Example 8: The mother and father were never married. There is no court order declaring the father to be a residential parent or legal custodian. The mother resides in School District A and the father resides in School District B. The non-disabled, non-emancipated child resides with the father. The child is entitled to tuition free enrollment in School District A.
- Example 9: The mother and father were never married. A court order declares the father (in addition to the mother) to be a residential parent and legal custodian. The mother resides in School District A and the father resides in School District B. The non-disabled, non-emancipated child resides with the mother **and** the father. **Read Carefully!** The child is entitled to tuition free enrollment in School District A **and** School District B.



3. When the Child Does Not Reside With a Parent

a. The Non-Emancipated Disabled Child

A disabled child between the ages of three and twenty-two years of age (i.e., 3 through 21) has the right to a tuition free education in the school district where the child resides — regardless of where the parents reside. R.C. 3313.64(B)(2)(c). If no residential parent resides in the school district in which the disabled, non-emancipated child resides, another school district will be responsible for the cost of educating this child.

CAUTION. However, the withdrawal of disabled child from a program or facility operated by the district of residence as defined under R.C. 3323.01(M) or from a program or facility with which the district of residence has arranged for education of the child and instead enrolling that child in another program or facility may be considered a unilateral placement. R.C. 3323.143. **While this position is debatable, please see the ODE position statement attached to the end of this material.**

b. Ohio Regular Education High School Diploma versus Ohio High School Equivalence Diploma

If a child graduates with an Ohio Regular Education High School Diploma, that child's eligibility for a tuition free education ceases regardless of any disability. But the same is not true for a disabled child who obtains an Ohio High School Equivalence Diploma (aka General Educational Development) diploma prior to age 22 – i.e., that child will still be entitled to a tuition free education in the school district where the child resides — regardless of where the parents reside.



**THE NON-EMANCIPATED DISABLED CHILD
WHO DOES NOT RESIDE WITH A PARENT**

Example 10: The mother and father reside in School District A. The disabled, non-emancipated child resides with a non-custodial aunt in School District B. The child is entitled to tuition free enrollment in School District B if the child so desires. The cost of educating this child must be paid by School District A. See R.C. 3313.64(C)(1); R.C. 3323.01(M)(1). But, School District A has the right to participate on the IEP team.*

NOTE: The enrollment of the child in School District B may be considered a unilateral placement for which parent shall be responsible for the payment of tuition.

Example 11: The mother and father reside in School District A. The disabled, non-emancipated child resides with a friend in School District B. The child is entitled to tuition free enrollment in School District B if the child so desires. The cost of educating this child must be paid by School District A. See R.C. 3313.64(C)(1); R.C. 3323.01(M)(1). But, School District A has the right to participate on the IEP team.*

NOTE: The enrollment of the child in School District B may be considered a unilateral placement for which parent shall be responsible for the payment of tuition.

Example 12: The mother and father were last known to reside in School District A. The disabled, non-emancipated child was abandoned and now resides in School District B. The whereabouts of either parent is unknown. The child is entitled to tuition free enrollment in School District B if the child so desires. The cost of educating this child must be paid by School District A. See R.C. 3313.64(C)(1); R.C. 3323.01(M)(2). But, School District A has the right to participate on the IEP team.*



* Note that while R.C. 3313.64(B)(1) provides for a child to be admitted to the school district in which the child's parent resides, R.C. 3313.64(B)(2)(c) permits a child to be admitted to the school district in which the child resides if the child does not live with his or her parents and requires special education. A strict statutory construction could lead some to argue that R.C. 3313.64(B)(1) and R.C. 3313.64(B)(2) are mutually exclusive. R.C. 3313.64, however, has been interpreted liberally – a disabled student who does not reside with his or her parents is entitled to tuition free education in **both** the district of residence and the district in which the residential parents reside.

c. The Emancipated Child

- 1) An emancipated child is entitled to tuition free enrollment in the school district in which the child resides. A child is not automatically emancipated upon the age of 18. Rather, a child is emancipated only when the “child” is totally self-supporting. See R.C. 3313.64(F)(1) (defining emancipated children as living apart from their parents and supporting themselves by their own labor). Emancipation status is determined on a case-by-case basis.
- 2) The emancipated disabled child creates a unique situation. A disabled child cannot be compelled to attend school once the child reaches 18 years of age. See R.C. 3321.01 (defining the compulsory school age). Yet, a disabled child is entitled to a free and appropriate public education until the “child” reaches the age of 22 years. See R.C. 3313.64(B) (defining the free admission school age for disabled students).



THE EMANCIPATED CHILD

- Example 13: A non-disabled child who is 18 years old lives with the parents in School District A. The child and mother have a fight and the child moves in with a friend in School District B while the child and mother work out their differences. The child is entitled to tuition free enrollment in School District A only.
- Example 14: A non-disabled child who is 18 years old lives with the parents in School District A. The child and mother have a fight and the child moves in with a friend in School District B. The child obtains a full-time job and intends to reside with his friend. The child is entitled to tuition free enrollment in School District B.
- Example 15: A disabled child who is 21 years old lives in a “home” in School District A. The disabled child’s parents reside in School District B. The child is not emancipated. The child is entitled to tuition free enrollment in School District A and School District B. The cost of educating this child must be paid by School District B. See R.C. 3313.64(C)(1); R.C. 3323.01(M)(1).
- Example 16: A disabled child who is 21 years old lives in a “home” in School District A. The disabled child’s parents reside in School District B. The child is emancipated. The child is entitled to tuition free enrollment in School District A. The cost of educating this child must be paid by School District A.



II. MILITARY PARENTS

In the case of any individual entitled to attend school under this division, no tuition shall be charged by the school district of attendance and no other school district shall be required to pay tuition for the individual's attendance. . . .

*Any child residing with a person other than the child's parent is entitled, for a period not to exceed twelve months, to attend school in the district in which that person resides if the child's parent files an affidavit with the superintendent of the district in which the person with whom the child is living resides stating **all** of the following:*

- (a) That the parent is serving outside of the state in the armed services of the United States;*
- (b) That the parent intends to reside in the district upon returning to this state;*
- (c) The name and address of the person with whom the child is living while the parent is outside the state.*

R.C. 3313.64(F)(4)



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MILITARY PARENTS

Example 17: The mother and father are divorced/legally separated and reside in School District A. Both parents have legal custody of the non-disabled, non-emancipated child. The shared parenting agreement declares the father the residential parent for school purposes. The child resides with the father. The father submits an affidavit stating (1) that he is a member of the U.S. armed services and is stationed outside the State of Ohio, (2) that he intends to reside inside School District A upon returning to Ohio, and (3) the child the will reside with the father's sister in School District A. The child is entitled to tuition free enrollment in School District A.

Example 18: The mother and father are divorced/legally separated. The father resides in School District A, and the mother resides in School District B. Both parents have legal custody of the non-disabled, non-emancipated child. The shared parenting agreement declares that the mother and father are both residential parents for school purposes. The child resides with the mother. The mother submits an affidavit stating (1) that she is a member of the U.S. armed services and is stationed outside the State of Ohio, (2) that she intends to reside inside School District B upon returning to Ohio, and (3) the child the will reside with the mother's boyfriend in School District B. The child is entitled to tuition free enrollment in School District B, as well as School District A.

Example 19: The mother and father are married and reside in School District A. The non-disabled, non-emancipated child resides with the mother and father. The father submits an affidavit stating (1) that he is a member of the U.S. armed services and is stationed outside the State of Ohio, (2) that he intends to reside inside School District B upon returning to Ohio, and (3) the child will reside with the father's sister-in-law in School District B. The child is entitled to tuition free enrollment in School District B, as well as School District A.



III. MISCELLANEOUS ISSUES

A. THE CHILD WHO IS REMOVED FROM HOME / LEGAL OR PERMANENT CUSTODY HAS CHANGED

1. Juv.R. 34(C)

If the child is not returned to the child's home, the court shall determine the school district that shall bear the cost of the child's education and may fix an amount of support to be paid by the responsible parent or from public funds.

2. R.C. 2151.362(A)

(1) In the manner prescribed by division (C)(1) or (2) of section 3313.64 of the Revised Code, as applicable, the court, at the time of making any order that removes a child from the child's own home or that vests legal or permanent custody of the child in a person other than the child's parent or a government agency, shall determine the school district that is to bear the cost of educating the child. The court shall make the determination a part of the order that provides for the child's placement or commitment. That school district shall bear the cost of educating the child unless and until the department of education determines that a different district shall be responsible for bearing that cost pursuant to division (A)(2) of this section. The court's order shall state that the determination of which school district is responsible to bear the cost of educating the child is subject to re-determination by the department pursuant to that division.

(2) If, while the child is in the custody of a person other than the child's parent or a government agency, the department of education determines that the place of residence of the child's parent has changed since the court issued its initial order, the department may name a different school district to bear the cost of educating the child. The department shall make this new determination, and any future



determinations, based on evidence received from the school district currently responsible to bear the cost of educating the child. If the department finds that the evidence demonstrates to its satisfaction that the residence of the child's parent has changed since the court issued its initial order under division (A)(1) of this section, or since the department last made a determination under division (A)(2) of this section, the department shall name the district in which the child's parent currently resides or, if the parent's residence is not known, the district in which the parent's last known residence is located. If the department cannot determine any Ohio district in which the parent currently resides or has resided, the school district designated in the initial court order under division (A)(1) of this section, or in the most recent determination made by the department under division (A)(2) of this section, shall continue to bear the cost of educating the child.

3. R.C. 3313.64(C)

A district shall not charge tuition for children admitted under division (B)(1) or (3) of this section. If the district admits a child under division (B)(2) of this section, tuition shall be paid to the district that admits the child as follows:

- (1) If the child receives special education in accordance with Chapter 3323. of the Revised Code, the school district of residence, as defined in section 3323.01 of the Revised Code, shall pay tuition for the child in accordance with section 3323.091, 3323.13, 3323.14, or 3323.141 of the Revised Code regardless of who has custody of the child or whether the child resides in a home.*
- (2) For a child that does not receive special education in accordance with Chapter 3323. of the Revised Code, except as otherwise provided in division (C)(2)(d) of this section, if the child is in the permanent or legal custody of a government agency*



or person other than the child's parent, tuition shall be paid by:

- (a) The district in which the child's parent resided at the time the court removed the child from home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first;*
- (b) If the parent's residence at the time the court removed the child from home or placed the child in the legal or permanent custody of the person or government agency is unknown, tuition shall be paid by the district in which the child resided at the time the child was removed from home or placed in legal or permanent custody, whichever occurred first;*
- (c) If a school district cannot be established under division (C)(2)(a) or (b) of this section, tuition shall be paid by the district determined as required by section 2151.362 of the Revised Code by the court at the time it vests custody of the child in the person or government agency;*
- (d) If at the time the court removed the child from home or vested legal or permanent custody of the child in the person or government agency, whichever occurred first, one parent was in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, was not known to reside in this state, tuition shall be paid by the district determined under division (D) of section 3313.65 of the Revised Code as the district required to pay any tuition while the parent was in such facility or placement;*



(e) *If the department of education has determined, pursuant to division (A)(2) of section 2151.362 of the Revised Code, that a school district other than the one named in the court's initial order, or in a prior determination of the department, is responsible to bear the cost of educating the child, the district so determined shall be responsible for that cost.*

(3) *If the child is not in the permanent or legal custody of a government agency or person other than the child's parent and the child resides in a home, tuition shall be paid by one of the following:*

(a) *The school district in which the child's parent resides;*

(b) *If the child's parent is not a resident of this state, the home in which the child resides.*

B. THE 60 DAY AFFIDAVIT – R.C. 3313.64(E)

A board of education may enroll a child free of any tuition obligation for a period not to exceed sixty days, on the sworn statement of an adult resident of the district that the resident has initiated legal proceedings for custody of the child.

C. MARRIAGE – R.C. 3313.64(F)(2)

Any child under eighteen years of age who is married is entitled to attend school in the child's district of residence.

D. MEDICAL CONDITION – R.C. 3313.64(F)(3)

A child is entitled to attend school in the district in which either of the child's parents is employed if the child has a medical condition that may require emergency medical attention. The parent of a child entitled to attend school under division (F)(3) of this section shall submit to the board of education of the district in which the parent is employed a statement from the child's physician certifying that the child's medical condition may require emergency medical attention. The statement shall be supported by such other evidence as the board may require.



E. DEATH – R.C. 3313.64(F)(5)

*Any child under the age of twenty-two years who, after the death of a parent, resides in a school district other than the district in which the child attended school at the time of the parent's death is entitled to continue to attend school in the district in which the child attended school at the time of the parent's death for the remainder of the school year, **subject to approval of that district board.** [Emphasis added.]*

F. BUILDING A NEW HOUSE – R.C. 3313.64(F)(6)

A child under the age of twenty-two years who resides with a parent who is having a new house built in a school district outside the district where the parent is residing is entitled to attend school for a period of time in the district where the new house is being built. In order to be entitled to such attendance, the parent shall provide the district superintendent with the following:

- (a) A sworn statement explaining the situation, revealing the location of the house being built, and stating the parent's intention to reside there upon its completion;*
- (b) A statement from the builder confirming that a new house is being built for the parent and that the house is at the location indicated in the parent's statement.*

The district superintendent shall establish a period of time not to exceed ninety days during which the child entitled to attend school under division (F)(6) or (7) of this section may attend without tuition obligation. A student attending a school under division (F)(6) or (7) of this section shall be eligible to participate in interscholastic athletics under the auspices of that school, provided the board of education of the school district where the student's parent resides, by a formal action, releases the student to participate in interscholastic athletics at the school where the student is attending, and provided the student receives any authorization required by a public agency or private organization of which the school district is a member exercising authority over interscholastic sports.



G. PURCHASING A HOME – R.C. 3313.64(F)(7)

A child under the age of twenty-two years residing with a parent who has a contract to purchase a house in a school district outside the district where the parent is residing and who is waiting upon the date of closing of the mortgage loan for the purchase of such house is entitled to attend school for a period of time in the district where the house is being purchased. In order to be entitled to such attendance, the parent shall provide the district superintendent with the following:

- (a) A sworn statement explaining the situation, revealing the location of the house being purchased, and stating the parent's intent to reside there;*
- (b) A statement from a real estate broker or bank officer confirming that the parent has a contract to purchase the house, that the parent is waiting upon the date of closing of the mortgage loan, and that the house is at the location indicated in the parent's statement.*

The district superintendent shall establish a period of time not to exceed ninety days during which the child entitled to attend school under division (F)(6) or (7) of this section may attend without tuition obligation. A student attending a school under division (F)(6) or (7) of this section shall be eligible to participate in interscholastic athletics under the auspices of that school, provided the board of education of the school district where the student's parent resides, by a formal action, releases the student to participate in interscholastic athletics at the school where the student is attending, and provided the student receives any authorization required by a public agency or private organization of which the school district is a member exercising authority over interscholastic sports.

H. EMPLOYEE PARENTS – R.C. 3313.64(F)(8)

A child whose parent is a full-time employee of a city, local, or exempted village school district, or of an educational service center, may be admitted to the schools of the district where the child's parent is employed, or in the case of a child whose parent is employed by an educational service center, in the district that



serves the location where the parent's job is primarily located, provided the district board of education establishes such an admission policy by resolution adopted by a majority of its members. Any such policy shall take effect on the first day of the school year and the effective date of any amendment or repeal may not be prior to the first day of the subsequent school year. The policy shall be uniformly applied to all such children and shall provide for the admission of any such child upon request of the parent. No child may be admitted under this policy after the first day of classes of any school year.

I. DOMESTIC VIOLENCE – R.C. 3313.64(F)(9)

A child who is with the child's parent under the care of a shelter for victims of domestic violence, as defined in section 3113.33 of the Revised Code, is entitled to attend school free in the district in which the child is with the child's parent, and no other school district shall be required to pay tuition for the child's attendance in that school district.

The enrollment of a child in a school district under this division shall not be denied due to a delay in the school district's receipt of any records required under section 3313.672 [3313.67.2] of the Revised Code or any other records required for enrollment. Any days of attendance and any credits earned by a child while enrolled in a school district under this division shall be transferred to and accepted by any school district in which the child subsequently enrolls. The state board of education shall adopt rules to ensure compliance with this division.

J. SENIOR YEAR – R.C. 3313.64(F)(10)

Any child under the age of twenty-two years whose parent has moved out of the school district after the commencement of classes in the child's senior year of high school is entitled, subject to the approval of that district board, to attend school in the district in which the child attended school at the time of the parental move for the remainder of the school year and for one additional semester or equivalent term. A district board may also adopt a policy specifying extenuating circumstances under which a student may continue to attend school under division (F)(10) of this section for an additional period of time in order to successfully complete



the high school curriculum for the individualized education program developed for the student by the high school pursuant to section 3323.08 of the Revised Code.

K. GRANDPARENT – R.C. 3313.64(F)(11)

As used in this division, "grandparent" means a parent of a parent of a child. A child under the age of twenty-two years who is in the custody of the child's parent, resides with a grandparent, and does not require special education is entitled to attend the schools of the district in which the child's grandparent resides, provided that, prior to such attendance in any school year, the board of education of the school district in which the child's grandparent resides and the board of education of the school district in which the child's parent resides enter into a written agreement specifying that good cause exists for such attendance, describing the nature of this good cause, and consenting to such attendance.

In lieu of a consent form signed by a parent, a board of education may request the grandparent of a child attending school in the district in which the grandparent resides pursuant to division (F)(11) of this section to complete any consent form required by the district, including any authorization required by sections 3313.712 [3313.71.2], 3313.713 [3313.71.3], and 3313.716 [3313.71.6] of the Revised Code. Upon request, the grandparent shall complete any consent form required by the district. A school district shall not incur any liability solely because of its receipt of a consent form from a grandparent in lieu of a parent.

Division (F)(11) of this section does not create, and shall not be construed as creating, a new cause of action or substantive legal right against a school district, a member of a board of education, or an employee of a school district. This section does not affect, and shall not be construed as affecting, any immunities from defenses to tort liability created or recognized by Chapter 2744. of the Revised Code for a school district, member, or employee.

L. SUPERINTENDENT AGREEMENT – R.C. 3313.64(F)(12)

A child under the age of twenty-two years is entitled to attend school in a school district other than the district in which the child is entitled to attend school under division (B), (C), or (E) of this



section provided that, prior to such attendance in any school year, both of the following occur:

- (a) The superintendent of the district in which the child is entitled to attend school under division (B), (C), or (E) of this section contacts the superintendent of another district for purposes of this division;*
- (b) The superintendents of both districts enter into a written agreement that consents to the attendance and specifies that the purpose of such attendance is to protect the student's physical or mental well-being or to deal with other extenuating circumstances deemed appropriate by the superintendents.*

While an agreement is in effect under this division for a student who is not receiving special education under Chapter 3323. of the Revised Code and notwithstanding Chapter 3327. of the Revised Code, the board of education of neither school district involved in the agreement is required to provide transportation for the student to and from the school where the student attends.

A student attending a school of a district pursuant to this division shall be allowed to participate in all student activities, including interscholastic athletics, at the school where the student is attending on the same basis as any student who has always attended the schools of that district while of compulsory school age.

M. HOMELESS – R.C. 3313.64(F)(13)

All school districts shall comply with the "McKinney-Vento Homeless Assistance Act," 42 U.S.C.A. 11431 et seq., for the education of homeless children. Each city, local, and exempted village school district shall comply with the requirements of that act governing the provision of a free, appropriate public education, including public preschool, to each homeless child.

When a child loses permanent housing and becomes a homeless person, as defined in [42 U.S.C.S. § 11434a] [i.e., a person who lacks a fixed, regular, and adequate nighttime residence – which



includes: (1) children who are sharing the housing of other persons, are living in hotels/motels/camping grounds, or are living in shelters; (2) children whose nighttime residence is not designed for sleeping accommodations; (3) children who live in cars, parks, public spaces, abandoned buildings, bus or train stations, or other similar settings; (4) migratory children], *or when a child who is such a homeless person changes temporary living arrangements, the child's parent or guardian shall have the option of enrolling the child in either of the following:*

- (a) *The child's school of origin, as defined in 42 U.S.C.A. 11432(g)(3)[(G)] [i.e., the school district where student last permanently resided];*
- (b) *The school that is operated by the school district in which the shelter where the child currently resides is located and that serves the geographic area in which the shelter is located.*

N. FOREIGN EXCHANGE STUDENTS – R.C. 3313.64(G)

A board of education, after approving admission, may waive tuition for students who will temporarily reside in the district and who are either of the following:

- (1) *Residents or domiciliaries of a foreign nation who request admission as foreign exchange students;*
- (2) *Residents or domiciliaries of the United States but not of Ohio who request admission as participants in an exchange program operated by a student exchange organization.*

O. DISPUTE RESOLUTION – R.C. 3313.64(K)

In the event of a disagreement, the superintendent of public instruction shall determine the school district in which the parent resides.



P. OHSAA

1. OHSAA Bylaw 4-3-1: All students participating in school sponsored sports must be enrolled in and attending full time in accordance with all duly adopted Board of Education or similar governing board policies of that school.
2. OHSAA Bylaw 4-3-4: A student who is enrolled 15 or more school days in any semester, or who participates in an interscholastic contest prior to or during a semester, shall have that semester count as one semester of eligibility. In addition, the following situations shall count as a semester of eligibility:
 - 1: A student who does not attend school in a semester due to a suspension or an expulsion shall have that semester(s) count in the total of eight that are permitted.
 - 2: A student who does not attend school due to enrollment in a postsecondary institution that is not part of the Postsecondary Enrollment Option Part B (dual credit for both high school and postsecondary school) shall have that semester(s) count in the total of eight that are permitted.
 - 3: A student who does not attend any school for a semester(s) due to truancy shall have that semester(s) count in the total of eight that are permitted.
3. OHSAA Bylaw 4-4-1: In order to be eligible in grades 9-12, a student must be currently enrolled and must have been enrolled in school the immediately preceding grading period. * * * Furthermore, during the preceding grading period, the student must have received passing grades in a minimum of five (5) one-credit courses or the equivalent, each of which counts toward graduation.
4. OHSAA Bylaw 4-6-1: The districts for all public schools are established by the State Board of Education and defined for athletic purposes. In addition, school districts with multiple high schools may establish attendance zones within those districts. In determining one's residence for purposes of these bylaws, the following criteria shall apply: (a) where the parents and family members sleep the majority of the time, (b) where the mail is received, (c) where the meals are prepared and eaten, (d) where the parents are registered to vote, and (e) where important family activities



take place during significant parts of each day. Note: It shall not be considered a “bona fide” change of residence as prescribed in Bylaw 4-7-2, Exception 1, or Bylaw 4-7-4 (1) if the parents of a transfer student vacate the residence prior to one year from the date that the student’s transfer is approved, and the student remains in the school into which the transfer was approved.

5. OHSAA Bylaw 4-6-2: A student who is a “child with a disability” as that term is defined at 42 U.S.C. Section 12102 (ADA) and the Regulations promulgated thereunder who is enrolled in a Special Education program at a school outside of the district of residence of parents is eligible at the school where the student attends classes or the school located in the district of residence of the parents, PROVIDED each of the following is met: (a) the student’s parents reside in Ohio; (b) the school district in which the parents reside does not provide the required programs to meet the student’s special education needs; and (c) there is a contractual agreement specifying the responsibility for educating a “child with disabilities” between the respective school boards or between the parents and the school the student with the disability will attend.
6. OHSAA Bylaw 4-6-3: A student whose parents reside outside the state of Ohio but within the United States will be ineligible for interscholastic athletics in a member school.

Note: A biological parent with custodial rights or adoptive parent must reside in Ohio.

EXCEPTION 1 — The Commissioner’s office may declare a student who is the subject of a custody order issued by a court of proper jurisdiction conferring custody upon a grandparent, aunt, uncle or sibling who resides in Ohio, if, in the sole discretion of the Commissioner’s office, the Commissioner’s office determines that the purpose of this change in custody was not for athletic reasons, but purely for the best interest of the student in terms of the student’s mental, physical and educational well-being.

Note: Upon enrollment of a student whose parents live outside the state of Ohio but within the United States, or if the parents move outside the state of Ohio prior to or during the student’s high school career, the principal of that school in which the student is being enrolled shall notify the Commissioner’s office of said enrollment, and the facts and circumstances regarding any change of custody so that the Commissioner’s office can



make an informed decision regarding the student's qualifications under this exception.

EXCEPTION 2 — A student who has attended a minimum of 15 days in the eleventh grade when the parents move outside the state of Ohio may be declared eligible for the twelfth grade provided the student maintains continuous enrollment in the Ohio school.

EXCEPTION 3 — A student who enrolls at first grade level in a school consisting of grades 1-12 and who maintains continuous enrollment shall be eligible for interscholastic athletics in grades 7-12 in that school regardless of place or state of residence of parents.

EXCEPTION 4 — A student who resides within the boundaries of a parochial school system consisting of grades 1-12 that has multiple sites organized into elementary schools (1-8) and secondary schools (9-12), and who has enrolled by fourth grade level of an elementary school in that system and has maintained continuous enrollment in that school system through grade 8, shall be eligible for interscholastic athletics in grades 9-12 providing the secondary school attended by the student is the school designated by the school system for the continuance of the student's educational program.

EXCEPTION 5 — A student who resides within the boundaries of a public school district in a neighboring state; and who attends an Ohio public school system under an arrangement through which the entire grade of the out-of-state student attends the Ohio public school system; and for whom the tuition or cost of education for said out-of-state student is paid by the neighboring state's school district of residence; and who will be eligible to receive a high school diploma from an Ohio public school system shall be eligible for interscholastic athletics in grades 7-12 at the schools designated by the Ohio school system for attendance by the students from the neighboring state.

EXCEPTION 6 — A student who is enrolled in a member school that provides housing for the student and accepts the role of the parent in loco parentis.

EXCEPTION 7 – A student who has been enrolled in an Ohio school pursuant to the Interstate Compact of Educational Opportunities for Military Children may be declared eligible at a member school upon submission of a special power of attorney, relative to the custody or



guardianship of a child of a military family and executed under applicable law. **The student shall be ineligible until ruled eligible by the Commissioner's office.**

7. OHSAA Bylaw 4-7-2: If a student transfers after the fifth day of the student's ninth grade year or after having established eligibility prior to the start of school by playing in a contest (scrimmage, preview or regular season/tournament contest), the student will be ineligible for one year from the date of enrollment in the school to which the student transferred. A student is considered to have transferred whenever enrollment is changed from one school to another school, or whenever the student participates in a practice, scrimmage or contest with a school-sponsored squad of a school in which the student has not been enrolled. Subject to the specific provisions of this Section 7 – Transfer – the following exceptions to the general transfer bylaw may apply:

EXCEPTION 1 — If a student's transfer is the result of a bona fide legal change of residence by the parents or legal guardians of the student from one public school district in Ohio to another public school district in Ohio, the Commissioner's Office may declare the student eligible insofar as the transfer bylaw is concerned provided:

- a) The student is enrolled in the new public school district of residence of the parents'/legal guardians' new residence or any non-public school; and
- b) In the case of an "intact" family, both parents have made the bona fide legal change of residence, and the former residence has been completely abandoned by the parents/legal custodians. In the case of a family in which the parents' marriage has been legally terminated or the parents were never married, the custodial parent has made a bona fide legal change of residence and the former residence of the custodial parent has been completely abandoned; and
- c) The parents of the student complete the notarized Affidavit of Bona Fide Change of Legal Residence as thoroughly, accurately and honestly as possible; and
- d) An administrator from the school to which the student is transferring affirms to the Commissioner's Office that she/he has



independently verified all of the information/affirmations set forth in the Affidavit of Bona Fide Change of Legal Residence; and

- e) The Commissioner's Office is satisfied that the purported change of residence was not accomplished in order to circumvent this Transfer Bylaw but rather the change of residence was the event that created the need to transfer enrollment for the student-athlete.

The student is ineligible until ruled eligible by the Commissioner's Office. The declaration of eligibility shall commence with the date of the letter ruling from the Commissioner's Office and requires the maintenance of the bona fide residence for one calendar year from the date of that ruling. Furthermore, the Commissioner's Office is authorized to rescind any declarations of eligibility granted under this exception and declare the student ineligible for up to one year from the date of such rescission in the event the Commissioner's Office learns of any falsification of any information given in the Affidavit of Bona Fide Change of Legal Residence or other documents submitted in the approval process, or if the parents fail to maintain the new residence for one (1) year from the date of the eligibility ruling. Parents making a bona fide legal change of residence into the state of Ohio for the first time may enroll the student in any school that accepts that student; however, these parents must also complete and submit the Affidavit of Bona Fide Residence. That student may be eligible insofar as transfer is concerned in accordance with this bylaw upon receipt of the completed and accurate Affidavit of Bona Fide Residence which indicates that both parents have moved into Ohio.

Note 1: These forms can be found at the OHSAA website.

Note 2: See the definition of a bona fide residence in Bylaw 4-6-1.

EXCEPTION 2 — If the student is the ward of a court-appointed guardian, and there is a subsequent change in that guardian that results in a change of school district, the student may be eligible in the district of residence of the new guardian or at any non-public school provided the student lives with the guardian for a minimum of one year and provided the Commissioners' Office is satisfied that the purported change of custody was not accomplished in order to circumvent this Transfer Bylaw but rather the change of custody was the event that created the need to transfer enrollment for the student-athlete. Likewise, if the student is the child of parents who were never married or have had their marriage terminated and there is a court ordered change of custody, the student may



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be eligible in the district of residence of the new custodial parent or at any nonpublic school provided the student lives with the new custodial parent for a minimum of one year and provided the Commissioners' Office is satisfied that the purported change of custody was not accomplished in order to circumvent this Transfer Bylaw but rather the change of custody was the event that created the need to transfer enrollment for the student-athlete. For purposes of this exception, the term "parent" means the biological or adoptive parents of the student or, as the case may be, the person to whom parenting rights and responsibilities have been allocated pursuant to court order.

In the event a student has been temporarily or permanently removed from the home, "parent" means the person or government agency with legal or permanent custody. In such a case, the student shall be eligible in the district of residence of the government agency/foster placement with legal or permanent custody or at any non-public school provided the student lives in that placement for a minimum of one year. If the student is subsequently removed from government agency and legal custody is placed back with the parents prior to the expiration of one year, the student may, with the permission of the placement agency/court and the agreement of the member school, remain enrolled in the school where the student was placed OR may return to the district of residence of the parents and apply for eligibility under this exception.

When a change of residential parent or legal custodian results in a change of school district, the student is ineligible until ruled eligible by the Commissioner's office.

EXCEPTION 3 — If, and only if, either one of the parents in a Shared Parenting Plan, notwithstanding any provisions therein to the contrary, makes a bona fide legal change of residence from one public school district into another public school district, and such move has taken place within the last calendar year, the student shall be immediately eligible insofar as transfer is concerned in the public school located in the residential district of either parent or any nonpublic school.

EXCEPTION 4 — If the high school, which is either the high school in a single high school public school district or a non-public high school, in which the student is enrolled closes or discontinues its high school program after grade nine, the student may enroll in any school and be immediately eligible insofar as transfer is concerned.



EXCEPTION 5 — If the bona fide residence of the student’s parents is annexed to a different school district or consolidated within a school district, the student may be ruled eligible upon transfer to a school in the annexed or consolidated district subject to modification by formal action by the Boards of Education concerned. A copy of such action by Boards of Education must be on file in the Association office before the Commissioner’s office can rule the student eligible.

EXCEPTION 6 — A student shall be entitled to one transfer into a public high school located in the public school district within which the student’s parent residence is located.

Note 1: Use of this exception requires the submission of the Exception Six Form to document the transfer as set forth in the exception. The form can be found at the OHSAA website.

Note 2: Exception six does not apply to transfers to and from high schools within a multiple high school district/system. Please see Bylaws 4-7-4, 4-7-6 and 4-7-7 for the transfer rules which apply to intra-district or system transfers.

EXCEPTION 7 — A student may return to non-public education by transferring from the public high school located in the district of residence of the parents to a non-public high school and have her/his eligibility restored at the discretion of the Commissioner’s office provided the following conditions have been met:

- a) That the transfer from the non-public high school to the public high school was not done for athletic reasons but for purely academic reasons or family circumstances beyond the control of the student and/or his/her parents; and
- b) The student had been continuously enrolled in the same system of non-public education (e.g., Catholic Conference of Ohio, Ohio Association of Independent Schools, Association of Christian School International or other category as denoted by the State Department of Education) beginning in the 6th grade and continuing thereafter through and including the eighth grade and either:



- 1) The student began grade nine in a high school within the same non-public system and shall transfer back to that same non-public high school or
 - 2) The student began grade nine in the public school located in the residential district of the parents and the transfer back to a high school within the same non-public school system in which the student was enrolled from grades 6-8 shall occur prior to the start of the student's tenth grade year.
- c) The student has been ruled eligible by the Commissioner's office.

EXCEPTION 8 — A student who does not live in the same school district as parents or legal guardian and who is financially self-supporting may be ruled eligible upon approval of the Commissioner at a school in the district where the student resides. The Commissioner is empowered to establish requirements for the student to be determined to be self-supporting. These requirements shall be established for each school year by May 15th of the preceding year. Self-support documentation must be submitted for approval every 30 days. The student is ineligible until ruled eligible by the Commissioner. Note: Living with and/or being employed by a relative does not qualify for self-support under this exception.

EXCEPTION 9 — A student transferred to the State School for the Blind or State School for the Deaf shall be eligible upon enrollment.

EXCEPTION 10 — The Commissioner shall have the discretionary power to waive the residence requirements in only those cases of students whose parents live outside the school district and whose contracted domicile is not available for their habitation. The students are ineligible until ruled eligible by the Commissioner.

EXCEPTION 11 — During the period of time, and only if, a school district ceases to sponsor its entire interscholastic athletic programs, a student from that district may transfer to any other school district/system and have his/her eligibility restored upon application to the Commissioner's office. Furthermore, if the district from which such student transferred resumes with its sponsorship of interscholastic programs and the student wishes to transfer back to the district from which he/she transferred, he/she may do so and have his/her eligibility restored in accordance with Exception 6 of Bylaw 4-7-2, and notwithstanding Bylaw 4-7-3, provided the transfer back occurs prior to the start of the next



school year following the school year in which resumption of sponsorship of interscholastic programs occurred.

In consideration of all applications for the restoration of eligibility pursuant to this Exception, the Commissioner's office shall give due consideration to all factors relating to the transfer and particularly the timing of the transfer in relation to the effective date on which sponsorship of interscholastic athletics ceases and/or resumes.

No student transferring under this provision shall be eligible until declared so by the Commissioner's office.

EXCEPTION 12 – A student returning from a domestic exchange program with whom the member school has partnered may be declared eligible insofar as the transfer bylaw is concerned if all the following conditions have been met:

- a) The domestic exchange program exists primarily for academic and educational learning experiences; and
 - b) The student receives credits that apply towards the student's graduation in the Ohio member school for the student's work in this domestic exchange program; and
 - c) In the event the student did participate in interscholastic athletics while enrolled in this domestic exchange program, the student's athletic participation was secondary to his/her academic and educational reasons for participation in this program; and
 - d) The domestic exchange program has, in its curriculum guide, a structured beginning and end to the program itself; and
 - e) The student shall be ineligible until declared eligible by the Commissioner's office upon submission of the designated OHSAA approval form.
8. OHSAA Bylaw 4-7-8: In order for a transfer student to be eligible for OHSAA tournament competition at a school, the student's name must be listed on the eligibility certificate submitted at the first tournament level in the sport.



9. OHSAA Bylaw 4-8-1: For the purpose of this bylaw, an international student is a student who is not a United States citizen and who is in Ohio receiving secondary education in an Ohio school. International students are ineligible for interscholastic athletics in Ohio unless they can meet one of the exceptions below.

EXCEPTION 1 – An international student may be declared eligible if the student’s parents have made a bona fide legal change of residence into Ohio and the international student is enrolled and attending an Ohio member school. The student is ineligible until ruled eligible by the Commissioner’s office.

EXCEPTION 2 – The international student who is a participant in a recognized visitor exchange program may be eligible for interscholastic athletics subject to the restrictions and conditions set forth below:

- a) The international student may be eligible for a maximum of one school year which is the first year of enrollment at the Ohio member school.
- b) The international student has not previously participated in any other visitor exchange program in the United States. If the international student has participated in another visitor exchange program in Ohio or any other state, the period of participation in that other program shall count against the one year maximum eligibility set forth in (a) above.
- c) The international student is in this country pursuant to a J-1 Visa. No other visa type, passport or other documentation shall qualify the student for eligibility under this exception.
- d) There shall be no evidence of a direct placement for athletic purposes into a specific member school in Ohio.
- e) No more than five (5) international students from the same visitor exchange program, in one member school, shall be permitted to be eligible.
- f) The member school at which the international student wishes to be declared eligible for interscholastic athletic participation must submit the appropriate forms to the Commissioner’s office, and the student and school must cooperate with the Commissioner’s office



in determining that all other requirements for eligibility have been satisfied.

The international student described in this Exception 2 shall be ineligible until declared eligible by the Commissioner's office upon submission of the appropriate form.

EXCEPTION 3 – An international student may be declared eligible for interscholastic athletics upon the submission of a court approved document certifying the student's adoption by a legal resident of the school district in which the student is attending. The student is not eligible until declared eligible by the Commissioner's office upon submission of the appropriate court documents.

EXCEPTION 4 – A student may be declared eligible for interscholastic athletics when the student's parents are citizens of the United States who reside outside the United States. The student is not eligible until declared eligible by the Commissioner's office upon submission of the appropriate documents.

10. OHSAA Bylaw 4-8-2: An Ohio student returning from an international exchange program may resume interscholastic competition in the same Ohio member school at the point of interruption provided the student did not receive credits toward graduation while participating in the exchange program and provided the student meets all requirements relative to age, semesters of eligibility as well as preceding grading period scholastic requirements upon return to the member high school. Such a student is ineligible until ruled eligible by the Commissioner's office.

Q. THE ILLEGAL ALIEN

1. School aged illegal immigrants are entitled to the same public education that the State offers other children residing within its borders. See *Plyler v. Doe* (1982), 457 U.S. 202.
 - a. As explained by the United States Supreme Court, denying undocumented or non-citizen children access to a tuition free public education “imposes a lifetime hardship on a discrete class of children not accountable for their disabling status * * * By denying these children a basic education, we deny them the ability to live within the structure of our civic institutions, and foreclose any realistic possibility that they will contribute in even the smallest way to the progress of our Nation.” *Plyler*, 457 U.S. at 223.



2. As the *Plyler* Court clarifies, the undocumented or non-citizen status of a student (or his or her parent or guardian) is irrelevant to that student's entitlement to an elementary and secondary public education – an illegal alien is entitled to a tuition free public education on the same basis as any other child described in this update.
3. In addition to a blanket entitlement to a tuition free public education, the May 6, 2011 “Dear Colleague Letter” from the United States Department of Justice and the United States Department of Education (“Departments”) warns of student enrollment practices that may chill or discourage the participation, or lead to the exclusion, of students based on their or their parents’ or guardians’ actual or perceived citizenship or immigration status.
4. Below are some examples of acceptable enrollment policies provided by the Departments, as well as policies that may not be used by schools to deny enrollment to a child:
 - a. Proof of Residency in the School District
 - i. School officials may require a student to provide proof that he or she lives within the boundaries of the school district. Copies of phone and water bills, lease agreements, or other documents may be requested for this purpose. These requirements must be applied in the same way for all children.
 - ii. However, a school district may not ask about a child’s or a parent’s citizenship or immigration status to establish residency within the district, nor may a school district deny a homeless child (including a homeless child who is undocumented) enrollment because he or she cannot provide the required documents to establish residency.
 - b. Birth Certificates
 - i. School officials may request a copy of a child’s birth certificate in order to show that a student falls within the school district’s minimum and maximum age requirements.



- ii. However, a school district may not prevent a child from enrolling in school because he or she has a foreign birth certificate.
- c. Social Security Numbers
 - i. A school district may request a student's social security number, but only if it (1) informs the student and parent that providing it is voluntary and (2) explains for what purpose the number will be used.
 - ii. However, a school district may not prevent a child from enrolling in school if a parent chooses not to provide a social security number.
- d. Race or Ethnicity Data
 - i. School districts have some Federal and state obligations to report race and ethnicity data about the students in their schools. A school district may request that a parent provide a child's race or ethnicity for this purpose only.
 - ii. However, a school district may not bar your child from enrolling if a parent chooses not to provide a child's race or ethnicity.



IV. THE DUE PROCESS HEARING

A. When Process Is Due

Children have a property interest in tuition free enrollment by virtue of R.C. 3313.64. The Fourteenth Amendment to the United States and Ohio Constitutions both accord children procedural due process rights relative to property interests (i.e., tuition free enrollment).

WHEN PROCESS IS DUE

Example 20: A parent attempts to enroll a child in School District A. The parent states that the parent and child reside in School District A. The admission officer suspects that the parent and child reside in School District B and are not entitled to tuition free enrollment. The child is entitled to due process before the child can be denied admission.

Example 21: A child is enrolled in School District A. The admission officer suspects that the parents and child currently reside in School District B and are not entitled to tuition free enrollment. The child is entitled to due process before the child can be forced to withdraw from School District A.

B. What Process Is Due

All children must be provided with notice and an opportunity to be heard before any child is denied tuition free enrollment.



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1. Notice

SAMPLE LETTER

[SCHOOL DISTRICT LETTERHEAD]

[DATE]

[FATHER'S FULL NAME]
[FATHER'S STREET ADDRESS]
[FATHER'S CITY, STATE AND ZIP CODE]

[MOTHER'S FULL NAME]
[MOTHER'S STREET ADDRESS]
[MOTHER'S CITY, STATE AND ZIP CODE]

Re: [NAME OF STUDENT]

Dear Mr. [FATHER'S LAST NAME] and Ms. [MOTHER'S LAST NAME]:

Residents of School District A are entitled to enroll in our public school system tuition free. A student is considered a resident of School District A if the student resides with a legal custodian whose place of residence is also within the boundaries of School District A. A student is also considered a resident if the student actually resides in the school district and receives special education. Students who are not residents of School District A may be admitted in our public school system on a tuition basis. I enclose copies of applicable board policies and regulations for your review.

The School District A Board of Education has information demonstrating that [NAME OF STUDENT] is not currently residing in School District A. This information will be presented at a due process hearing that is scheduled for [TIME AND DATE] at [LOCATION]. At this due process hearing, you will have the opportunity to refute the allegation that [NAME OF STUDENT] is not residing in School District A with a legal custodian. **Please bring any and all documentation that evidences custody and residency.** At the conclusion of this due process hearing, I will determine the dates which [NAME OF STUDENT] has been a resident of School District A.

If I conclude that [NAME OF STUDENT] is currently a resident of School District A, [NAME OF STUDENT] may continue to attend our public schools tuition free. If I conclude that [NAME OF STUDENT] is not currently a resident of School District A, a determination will need to be made regarding whether to permit [NAME OF STUDENT] to attend our public schools on a tuition basis and whether to pursue legal action to collect past-due tuition. I will provide you with my decision within one week of the due process hearing.

Sincerely,

[Superintendent or Designee]

Enclosures

cc: Matthew John Markling, Board Attorney



2. An Opportunity to Be Heard

Step One: Greetings

This should not be an adversarial hearing. The presumption is that the child is properly enrolled in your school district. Why? Because the parents say so. This child may end up remaining in your school district, and no good can come from alienating a parent.

Step Two: The School Presents Available Evidence to Rebut Presumption of Residency

The school has the burden of proving that the child does not reside in the school district. The school should present the parents with any and all documentation that exist to rebut that presumption (e.g., video tapes, witness testimony, court orders, affidavits, letters, student records, etc.).

Step Three: The Parents Have an Opportunity to Present Evidence to Establish Residency and To Respond to the School's Evidence

The school should allow the parents an opportunity to present their "side of the story" without interruption.



Step Four: The School Asks the Parents Further Questions

After the parents have provided the school with the parental “side of the story,” without interruption, the school will ask follow-up questions, such as:

- Does the parent have a custody order? Is it the most recent order? What does it say?
- Does the parent have a shared parenting plan? Is it the most recent plan? What does it say?
- Does the parent have a lease? What does it say?
- Does the parent have a deed? What does it say?
- Does the parent have a W-2 form? Where is it sent?
- Does the parent have utility bills? Where are they sent?
- Does the parent have any other documentation that establishes residency? What do they say?

Reminder 1: Whether a child is homeless is irrelevant to tuition free enrollment purposes. The focus is on residency.

Reminder 2: Whether a building is structurally sound is irrelevant to tuition free enrollment purposes. The focus is on residency.

Reminder 3: Whether a parent is employed is irrelevant to tuition free enrollment purposes. The focus is on residency.



Step Five: The School Provides the Parents with a Reasonable Opportunity to Obtain Sufficient/Additional Evidence

Reminder 4: It is presumed that the child resides in the school district because that is what the parents report. The school is strictly liable if the wrong decision is made.

Step Six: The School Must Make a Residency Determination

Has the parent produced sufficient evidence to establish residency within the district? Is the hearing conducted by the Superintendent's designee? What do board policies and guidelines state with respect to residency determinations?

Reminder 5: Residency is determined on a case-by-case basis.

Step Seven: The School Must Submit the Residency Dispute to the Superintendent of Public Instruction – See **WARNING!**

R.C. 3313.64(K) provides that, in the event of a disagreement, the superintendent of public instruction shall determine the school district in which the parent resides. If the school district determines the student is not entitled to a tuition free education within the district the matter must be submitted to the superintendent of public instruction for a final determination.



Step Eight: The ODE Must Make an Enrollment Determination – See **WARNING!**

While there is no requirement to do so, ODE recommends that schools maintain enrollment until a final decision is rendered.

Step Nine: The School Must Make a Collection Determination — Is the Auditor of State Watching? – See **WARNING!**

If the superintendent of public instruction determines that the student is not entitled to a tuition free education, the school is required to collect tuition for the unauthorized attendance from the parents or guardian of the student.

WARNING!

If your school board is pursuing a tuition collection lawsuit, you must be mindful that there is no dispute that the plain and unambiguous language of R.C. 3313.64(K) provides that: “In the event of a disagreement, the superintendent of public instruction shall determine the school district in which the parent resides.” In the case of *Forest Hills Local Sch. Dist. Bd. of Edn.*, 2003-Ohio-3444, the Ohio Twelfth District Court of Appeals agreed and held that a trial court has no subject matter jurisdiction to determine tuition disputes until the state superintendent so decides. While neither the General Assembly nor the Twelfth District appear to appreciate the day-to-day burden this places upon school districts, the statute says what it says.



SAMPLE GUIDELINES

School Boards Must Collect Tuition

*When the board of education * * * admits to the schools of its district any pupil who is not entitled to be admitted to the district's schools [tuition free] * * * such board shall collect tuition for the attendance of such pupil from the parents or guardian of the pupil.*

R.C. 3327.06(B).

School Boards Must Refer the Matter to the Prosecuting Attorney

In addition to civil liability, individuals who enroll students within a district in which they are not entitled to a tuition free public education are potentially guilty of tampering with records (R.C. 2913.42) and theft (R.C. 2913.02).

Prosecuting Attorney

The county prosecutor has the statutory obligation to represent every school district in the county other than city, joint vocational, and cooperative school districts. R.C. 3313.35.

The School Board should refer tuition reimbursement cases amounting to less than \$2,000 to the county prosecutor.

City Law Director

The city law director has the statutory obligation to represent a city school district. R.C. 3313.35.

The School Board should refer tuition reimbursement cases amounting to less than \$2,000 to the city law director.



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Private Legal Counsel

The School Board has the statutory right to retain private legal counsel. R.C. 309.10.

The School Board should refer tuition reimbursement cases amounting to \$2,000 or more to private legal counsel.

Private legal counsel shall file tuition reimbursement complaints in the municipal court when the total amount is between \$2,000 and \$15,000. Cases exceeding \$15,000 will be filed in the court of common pleas.

Private legal counsel shall use paralegals to draft tuition reimbursement complaints in order to help reduce legal costs.

The School Board shall provide all applicable information to private legal counsel before tuition reimbursement complaints are filed in order to help reduce legal costs.

In tuition reimbursement cases filed in municipal court, private legal counsel shall not serve discovery upon defendants or file dispositive motions without the prior written approval of the Superintendent.

Unless otherwise directed by the Superintendent, private legal counsel will cease prosecuting tuition reimbursement cases when the total amount of attorney fees and costs equals or exceeds 50% of the total tuition due. For example, when the total tuition due the School Board is \$4,000, private legal counsel will cease prosecuting the tuition reimbursement case after a total of approximately \$2,000 in attorney fees and costs have been expended. Counsel shall monitor this ratio and notify the Superintendent's office when reaching the 50% ratio is imminent. Absent specific direction from the Superintendent to continue prosecuting the matter, counsel shall advise the Superintendent, in writing, that the 50% cutoff has been reached and further activity has been ceased in accordance with the Superintendent's general direction.

Once judgment is obtained in tuition reimbursement cases, private legal counsel shall initiate collection proceedings at a flat attorney fee of \$500. That fee does not include any associated court costs, the total of which will be borne by the School Board.



THE LAWSUIT

Count One: Theft

The student did knowingly receive educational instruction when the parent(s) and student did not reside in the school district and the student was not entitled to attend the school district tuition-free.

Count Two: Unjust Enrichment

Educational benefits have been conferred by the school board upon the parent(s).

The parent(s) knew that the school board was providing the parent with educational benefits.

The parent(s)'s retention of the educational benefits provided by the school board, without payment, is unjust.

Count Three: Fraud

The parent(s) owe(s) a duty to the school board to disclose the proper residence.

The parent(s) concealed the proper residence from the school board with the intent to mislead the school board into believing that the child resided in the school district.

The school board justifiably relied upon the parent(s)'s concealment.

The school board was injured as a direct result of the parent(s)'s concealment.

The parent(s) acted in a malicious, bad faith, wanton and/or reckless manner in perpetrating the fraud upon the school board.



This presentation and accompanying material on unfamiliar residency issues is intended for discussion purposes among school leaders only. Neither this presentation nor any accompanying material can substitute for consultation with competent legal counsel. Legal jurisprudence is like the always changing Midwestern weather. It is simply impossible to guarantee either the accuracy or currency of this presentation and material in every detail. If legal advice is needed with respect to a specific factual situation, you are encouraged to seek competent professional assistance.



Residence and Custody of Children with Disabilities
Determining Financial Responsibility for Educating Children with Disabilities

Situation	Responsibility
<p>1. Child Resides with Parent and Child in Custody of Parent</p>	<p>A child with disabilities is entitled to a free appropriate public education in the district of residence.</p> <p style="text-align: center;">Ohio Revised Code (ORC) 3323.08(A)(5)</p>
<p>2. Child Resides with Parent and Child in Custody of Government Agency or Other Person</p>	<p>If the parent has been legally divested of the custody of a child with disabilities, the child may, but rarely does, reside with the parent</p> <p>In these rare instances, the Juvenile Court should be contacted should there need to be a ruling on which district should be responsible for paying for the child's education. In most cases, the child may attend school tuition free in the district in which the parent resides.</p> <p style="text-align: center;">ORC 3323.08(A)(5)</p>
<p>3. Child Resides Voluntarily with Person Other Than Parent and Child in Custody of Parent</p>	<p>A child with disabilities residing with relatives or a person other than the parent [but not in a home, including a foster home, as defined in ORC 3313.64(A)(4)] without having been placed by a proper legal authority is the responsibility of the parent. The child is considered to have been unilaterally placed by the parent. The parent shall pay tuition and excess cost, if any, for a child with disabilities attending a school outside the parent's district of residence.</p> <p style="text-align: center;">ORC 3323.143</p> <p>If a custodial parent of a child with a disability has made a unilateral placement of the child, the custodial parent shall be responsible for payment of tuition and excess cost, if any, to the program or facility the child is attending as a result of that placement as long as the district of residence has offered a free appropriate public education to that child, and the unilateral placement is not a home, as defined in ORC 3313.64(A)(4).</p> <p style="text-align: center;">ORC 3323.143</p>

Residence and Custody of Children with Disabilities
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<p>3. Child Resides Voluntarily with Person Other Than Parent and Child in Custody of Parent <i>(continued)</i></p>	<p>Exceptions: <u>Child Resides with Grandparent.</u> If a child with disabilities under the age of 18 resides with his/her grandparent and the grandparent has</p> <ul style="list-style-type: none">• obtained a Power of Attorney (POA) completed by the parent, guardian or custodian of the child (ORC 3109.51 - 3109.62) or• a Child Caretaker Authorization Affidavit (CAA) created by the grandparent when the child's parent, guardian or custodian cannot be located (ORC 3109.64 – 3109. 73), <p>the district where the grandparent resides is responsible for providing the child with a free appropriate public education.</p> <p>The POA or CAA gives the grandparent full authority over care, physical custody, and control of the child including the authority to enroll the child in school, to discuss with the school district the child's educational progress, and to consent to all school-related matters.</p> <p>Forms for creating these documents are included in the Ohio Revised Code:</p> <ul style="list-style-type: none">• ORC 3109.53 Form of power of attorney for residential grandparent.• ORC 3109.66 Form of caretaker authorization affidavit. <p><u>District Where Child Resides Determines That Another School District is Responsible for the Child's Education.</u> Until this determination is made, the district where the child resides continues to provide the child with an education. Once this determination is made, the district where the child resides is entitled to the payment of tuition and excess cost (if applicable) from the district determined to be responsible for the child's education. The district where the child resides must continue to educate the child.</p>
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Residence and Custody of Children with Disabilities
Determining Financial Responsibility for Educating Children with Disabilities

<p>4. Child Resides in a Home and Child in Custody of Parent</p>	<p>The district in which the parent resides shall be financially responsible for Ohio residents. For a child whose parent is a resident of another state, the "home" shall be financially responsible.</p> <p style="text-align: center;">ORC 3323.13 and 3323.141</p> <p>Except as used in division (C)(2) of this section, "home" means a home, institution, foster home, group home, or other residential facility in this state that receives and cares for children, to which any of the following applies:</p> <p>(a) The home is licensed, certified, or approved for such purpose by the state or is maintained by the department of youth services.</p> <p>(b) The home is operated by a person who is licensed, certified, or approved by the state to operate the home for such purpose.</p> <p>(c) The home accepted the child through a placement by a person licensed, certified, or approved to place a child in such a home by the state.</p> <p>(d) The home is a children's home created under section 5153.21 or 5153.36 of the Revised Code.</p> <p style="text-align: center;">ORC 3313.64(A)(4)</p>
<p>5. Child Resides in a Home and Child in Custody of Government Agency or Other Person</p>	<p>The cost of educating a child with disabilities shall be paid by:</p> <p>A. The district designated by the court or ODE if the initial court order has been modified, or</p> <ul style="list-style-type: none"> • If the parent has moved to another district and the district designated by the court can provide documentation to the Ohio Department of Education that the parent resides in another district, then the identified district is responsible for the cost of educating the child. <p style="text-align: center;">ORC 2151.362</p> <ul style="list-style-type: none"> • The form for initiating this process – Request to Change School District Responsible for Payment of Tuition

Residence and Custody of Children with Disabilities
Determining Financial Responsibility for Educating Children with Disabilities

<p>5. Child Resides in a Home and Child in Custody of Government Agency or Other Person <i>(continued)</i></p>	<p>Pursuant to Ohio Revised Code 2151.362 – is posted on the Ohio Department of Education Web site at http://education.ohio.gov, keyword search: <i>SF-DRC</i>.</p> <p>B. The district in which the child's parents reside, or C. The last school district in which the child's parents are known to have resided if the parents' whereabouts are unknown.</p> <p>ORC 3313.64(C)(1)</p>
<p>6. Child Resides in a Home and Child in Custody of Government Agency or Other Person – Court Order Modified from Original Court Order</p>	<p>The school district named in the modified court order shall be responsible for the tuition.</p> <p>ORC 2151.362</p>
<p>7. Child Resides in a Home and Child in Custody of Parent Who Is Not an Ohio Resident</p>	<p>"Home" shall pay the cost which includes tuition plus per-pupil amount received under State Basic Aid. Excess costs may also be charged.</p> <p>ORC 3323.141</p>
<p>8. Child Resides Apart from Parent and Supports Self and Child Is Own Custodian</p>	<p>Shall be admitted free in the district in which the child resides.</p> <p>ORC 3313.64(F)(1)</p> <p>"Self supporting" is defined as a child where all of the following are true:</p> <ul style="list-style-type: none"> • Is at least 18 years of age, but younger than 22 years of age; • Lives in a residence other than where his/her parent or parents reside; • Supports self through his/her own labor; • Does not rely on SSI disability benefits for support; • Would NOT meet the definition of a person who is homeless under the McKinney-Vento Homeless Education Act.
<p>9. Child Under 18 Years of Age and Married</p>	<p>The child's is entitled to attend school in the child's district of residence.</p> <p>ORC 3313.64 (F)(2)</p>

Residence and Custody of Children with Disabilities
Determining Financial Responsibility for Educating Children with Disabilities

<p>10. Child Who is Homeless</p>	<p>The child may attend school in his/her school of origin* or in the district where the child temporarily resides. If the child selects to enroll in the district where he or she temporarily resides, that district must immediately enroll the child.</p> <p>The district that the child selects is responsible for providing the child with a free appropriate public education.</p> <p style="text-align: center;">ORC 3312.64(F)(13)</p> <p><i>* The school where the child attended when permanently housed or the school in which the child was last enrolled.</i></p>
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If you have additional questions regarding tuition responsibilities or need assistance in completing the SF-DRC form, please contact your School Finance Area Coordinator. A directory of area coordinators is posted on the ODE Web site at <http://education.ohio.gov>, keyword search: *area coordinator*.