



# NYS Kinship Navigator

## EDUCATION\*

### ENROLLMENT IN SCHOOL

Even if children are living with persons in a parental relationship (including the new parental designees), they need to fulfill other criteria in order to qualify for free tuition.<sup>1</sup> School districts often demand proof of legal custody or guardianship as a requirement for school admission or as documentation of residency.

**Court orders, however, are not required under the Education Law.<sup>2</sup>** A district may require a sworn affidavit from the parent's acknowledging their transfer of custody and control.<sup>3</sup>

Students must prove by an examination of the **totality of the circumstances** that they are permanent residents of the school district, intending to remain permanently in that district.<sup>4</sup>

Because grandparents can show that the child is residing with the intent to remain, they do not need legal custody or guardianship to get children accepted (tuition free) for public school in the districts where they reside.<sup>5</sup>

In sum, the caregiver must show that they have assume the care and control of the child. This can be done by affidavits (notarized sworn statements). The caregiver must also prove that the child resides in their home, with the intention to remain. This can be also be proven by an affidavit accompanied by documents that show where the child resides. However local school districts have different practices in this area and the caregiver should inquire with the school district and possibly with a local attorney knowledgeable about education law.

## **WHO CAN BE RESPONSIBLE FOR A CHILD'S EDUCATION?**

Only a “**persons in parental relationship**” can assume responsibility for a child's education. Persons in parental responsibility are responsible for attendance, educational necessities, and may participate in school related activities, such as parent teacher meetings.

Persons in parental relationship include: parents, guardians, step-parents and “custodians” (who are any person caring for children because the parents are deceased, mentally ill, incarcerated, have been committed to an institution, or have abandoned or deserted the children),<sup>6</sup> and since September 2005 persons who are designated in writing by the parent. *See* the General Obligations Law Article 5 and also Public Health Law regarding immunization.<sup>7</sup>

There is **now a statutory DESIGNATION of parental authority.**<sup>8</sup> The standard power of attorney is not designed for delegating parental powers over children. Although the New York statutory general power of attorney permits, among other things, the delegation of powers related to “personal relationships and affairs.”<sup>9</sup> However, a new section in the General Obligations Law now permits parents to designate many of their powers. *See* parental designation forms.

New York State's Department of Education has promulgated affidavits for parents and custodians for the purpose of school enrollment purposes. How the new law will impact these affidavits is unclear. *See* affidavits.

Any person who is responsible for a child's education may participate in planning the **Individualized Education Plan** for children who have disabilities.<sup>10</sup>

*See* affidavits and parental designations.

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<sup>1</sup> Free tuition requires residence in the school district. N.Y. Educ. Law § 3202.

<sup>2</sup> *Catlin v. Sobol*, 77 N.Y.2d 552.

<sup>3</sup> *Appeal of Pernell*, 30 Ed. Dept. Rep. 380.

<sup>4</sup> 34 Educ. Dept. Rep. 551, 603; 35 Educ. Dept. Rep. 61; *Matter of Moncrieffe*, 121 Misc. 2d 395. (Surr. Ct. Nassau Co. 1983).

<sup>5</sup> Contact Catholic Family Center in Rochester or the Grandparent Caregiver Law Center of the Brookdale Center on Aging, [info@brookdale.org](mailto:info@brookdale.org) for more information.

<sup>6</sup> N.Y. Educ. Law § 3212(2). *See also*: N.Y. Educ. Law § 4111 (Indian child truant returned to person in parental relation; schooling record, issuance, person in parental relation); N.Y. Educ. Law § 3222 (school records); N.Y. Educ. Law § 4402 (Committee on Special Education can deal with person in parental relationship); N.Y. Educ. Law § 4107 (person in parental relation to an Indian child can be held criminally responsible for attendance), N.Y. Educ. Law § 4106 (duties of person in parental relation to Indian Children). *See also*, Individual Education Plans (IEPs), 34 U.S.C. §. 300.20(a). But, parents and guardians retain exclusive powers for some school situations. Only parents and guardians can consent to school drug testing, N. Y. Educ. Law § 912-a; receive tuition reimbursement, N.Y. Educ. Law § 562; consent for employment certificate, N.Y. Educ. Law § 3217, N.Y. Educ. Law § 2119 and farm work permits, N.Y. Educ. Law § 3226; and in attendance conflicts with religion of parent or guardian, can be absent from education, N.Y. Educ. Law § 3204.

<sup>7</sup> N.Y. Public Health Law § 2164.

<sup>8</sup> The arrangements that parents and grandparents have created without state involvement exist apart from lawful custody as it is defined in the Domestic Relations Law. However, they are a form of "custody" and in practice family courts recognize the person who has informal custody and provide notice to "a party having care, custody, and control", N.Y. Dom. Law § 71 and "any person who has physical custody", N.Y. Dom. Rel. Law § 75-e. *But see*, N.Y. Civ. Prac. L. & R. § 1201. Regarding the authority of informal caregivers, statutes offer only limited powers. Statutes permit the delegation of parental authority for transfers of "care and custody" to the local social service department, N.Y. Soc. Serv. Law § 384-a(1), and for certain recreational activities, N.Y. Envtl. Conser. Law §§ 1-0920, 1-0715.

<sup>9</sup> N.Y. Gen. Oblig. Law § 5-1502I, "Personal Relationships and Affairs" provides that the agent may be appointed: "to do any other act or acts, which the principal can do through an agency, for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to parents, relatives, friends and organizations." While it can be argued that this authority includes education and medical, in practice it has been used exclusively for financial needs. This subdivision specifically refers to real and personal property. N.Y. Gen. Oblig. Law § 5-1502I(14).

<sup>10</sup> Amendments to The Individuals with Disabilities Education Act (IDEA), Pub. Law 105-17 (1997). *See also* IDEA, Pub. L.101-476.

### A Program of Catholic Family Center

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