



NYS Kinship Navigator

PUBLIC SCHOOL ENROLLMENT

Kinship caregivers may face difficulties when they attempt to enroll children in a public school. In general, kinship caregivers will have to prove that the child is residing with them and that the caregiver has assumed complete care and control of the child.

New York's education law permits anyone under the age of 21 who does not have a high school diploma to attend school tuition free in the school district where they reside.ⁱ

Legal Custody or Guardianship is NOT NECESSARY

If the kinship caregiver has legal custody or guardianship, schools routinely accept the court order as proof of residency and care and control. **If the caregiver does not have a court order, school districts are legally obligated to enroll the child tuition free – if the caregiver can prove residency and care and control.**

Legally speaking, a student's residence is presumed to be that of his/her parent or legal guardianⁱⁱ. However, the presumption can be overcome by a "totality of the circumstances" showing that the child does not reside with his/her parentsⁱⁱⁱ and that the care and control of the child is now exercised by the caregiver^{iv}. Note that if the parent has completely given care and control to the caregiver, the parent can continue to have some contact with the child^v. Also, residency must be "permanent;" that is the student must intend to remain in the school district.

Procedure

Only the school board or its designee may determine whether a child is entitled to attend school in the school district. It is important that the caregiver not accept a clerk's rejection. Instead, the caregiver should ask for information on how to request an official determination.

If the final determination goes against the caregiver, then the caregiver must be notified in writing within two days and also be told how to appeal the determination. The caregiver has 30 days from the date of the determination to appeal. Do not accept someone's verbal refusal. You have a right to an official determination^{vi}.

Necessary Proof for Enrollment

Residency and care and control can be proven by affidavits. An affidavit is a sworn statement that is notarized. Some schools have their own affidavit forms that ask questions about residency and care and control. If the school does not have its own affidavit forms, you can use the [affidavit forms](#) on the Kinship Navigator web site. The Kinship Navigator provides blank affidavit forms and also suggestions on what you must include in the affidavits.

There are two affidavits: one for the parent(s) and one for the caregiver. Read them carefully and answer honestly, with the understanding that you must show residency and care and control. Remember that affidavits must be signed in front of a notary.

Caregivers will also have to show their relationship to the child, the student's age (birth certificate), and immunizations.

Parental Designation

In addition to the school enrollment affidavits, caregivers should also ask the parent(s) to sign a [parental designation form](#) that authorizes the caregiver to make school related decision and to make medical related decisions for the child. See the legal fact sheet on Parental Designations for information about this form.

The parental designation can help you obtain important records, like a birth certificate and immunizations history. Birth certificates are usually maintained by the local department of health. You can ask them how to apply or you can use a web-based service found at http://www.health.state.ny.us/vital_records/birth.htm.

For more information, visit the state education department's student support services at <http://www.emsc.nysed.gov/sss>. Look for information on attendance and residency.

ⁱ [NYS Education Law Section 3202. Public schools free to resident pupils; tuition from nonresident pupils.](#))

ⁱⁱ Catlin v. Sobol, 155AD2d 24

ⁱⁱⁱ Appeal of Ambris, 31 Ed Dept Rep 41

^{iv} Catlin v. Sobol

^v Appeal of Pinto, 30 Ed Dept Rep 374

^{vi} 8 NYCRR 100.

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