

New York Public Schools: Enrollment

A School Enrollment Guide for Kinship “De Facto” Custodians

IMPORTANT NOTE: THIS GUIDE INFORMS ABOUT SCHOOL ENROLLMENT. IT IS NO SUBSTITUTE FOR LEGAL ADVICE OR FOR CONSULTING WITH A PROFESSIONAL WHO IS KNOWLEDGEABLE ABOUT EDUCATIONAL LAW.

Background: Who Is A Kinship “De Facto Custodian”?

AND

What Are The Issues In School Enrollment Facing Kinship “De Facto Custodian”?

I: Enrollment

FORM A (Designate Parental Relationship)

OR

Emancipated Minor

II: Residency

“Care, Custody, and Control” (Affidavits)

FORM B (Parent Affidavit) *and*

FORM C (De Facto Custodian Affidavit)

OR

Emancipated Minor

OR

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Introduction

Who is a kinship “de facto” custodian?

A kinship “de facto” custodian (hereafter called simply a de facto custodian) is a non-parent who has not been granted legal guardianship or custody through a court, but has nonetheless assumed care giving responsibilities. In other words, de facto custodianship is based on factual reality rather than in law. **You are a de facto custodian if you are a non-parent taking care of a child without a court order providing you with the specific legal right to care for the child.**

What are the issues in school enrollment facing de facto custodian?

New York Education Law § 3202(1) provides that a “[a] person over five and under twenty-one years of age who has not received a high school diploma is entitled to attend the public schools maintained in the district in which such a person resides without the payment of tuition.”

De facto custodians who wish to enroll a student in a school district in New York, tuition free, generally face three issues: enrollment, residency, and appeal. **Enrollment** issues involve questions of authority. **Meaning: who can actually enroll a student in a school district.** **Residency** issues involve the ability of the de facto custodian to demonstrate actual physical presence of the student within a school district as well as intent to stay.¹ **Meaning: the ability of the de facto custodian to prove that the student lives in the school district and intends to continue to live in the school district.** **Appeal** issues deal with the procedures that determine residency when the school district refuses to enroll a child in school. **Meaning: what happens when a student’s residency is denied.** This guide attempts to provide information about the options available to de facto custodians when dealing with the issues of enrollment, residency, and appeals.

I. Enrollment

Can a de facto custodian enroll a student?

Since de facto custodianship is based on factual reality rather than a court order, a de facto custodian may not enroll a student on the basis of the de facto custodianship alone. A de facto custodian may however enroll a student if he or she is designated as a “person in a parental relation” by the parent of the student under New York’s General Obligation Law § 5-1551. Any designation under § 5-1551 may not exceed six months and must not be in contradiction with any prior order from any court in any jurisdiction that would prohibit the designating parent

¹*Appeal of Anthony S.*, 32 Ed Dept Rep 93; *Appeal of Bonfante-Ceruti*, 31 Ed Dept Rep 38; *Appeal of Reifler*, 31 Ed Dept 235; *Appeal of Tynan*, 28 Dept Rep 4; *Matter of Whiteman*, 24 Ed Dept Rep 337

from exercising the same or similar authority.² **Therefore in order to enroll a student, a de facto custodian must be designated a “person in a parental relation” by the parent or legal guardian of the child. To become a “person in a parental relation” fill out and a designation form.**

SEE FORM A³ (Designate Parental Relationship)

Note: Following FORM A is a set of instructions on how to fill out FORM A

*Here it is important to note that while a parental designation of a de facto custodian as a person in a parental relationship under New York’s General Obligation Law § 5-1551 is sufficient for enrollment purposes, it is insufficient for the purpose of establishing residency.

Meaning: If you live in a different school district then the child’s parent or legal guardian, you also have to prove residency. Continue to II. Residency.

What if the parent or legal guardian cannot be found or does not want to designate the de facto custodian as a “person in a parental relation?”

NOTE: If the parent or legal guardian cannot be found, it may be possible to enroll the child after proving residency. If parent’s whereabouts are unknown, residency affidavit of custodian and child (if appropriate) may be sufficient to establish residency. Under Education Law, certain circumstances where parents cannot assume school responsibilities will qualify a caregiver as a “person in parental relationship” and such persons can enroll a child in school so long as they can prove that the child resides with them.

If the parent or legal guardian of the child is not in the picture for one reason or another, then another option could be for the child to become an emancipated minor. Emancipated minors are able to enroll themselves into school. To learn more about how a child may become an emancipated minor, please refer to the section below.

II. Residency.

How is residency determined if the district in which the de facto guardian resides differs from the district of the legal guardian, custodian, or parent?

First, for education purposes, an individual can only have one legal residence.⁴ Second, in New York, generally, there is a presumption that a student resides in the district where his or

² Further instructions on the content requirements of a parental designation under §5-1551 may be obtained at www.nysteachs.org/media/INF_NYS_ParentalDesignLaw_2005.doc.

³ FORM A and FORM A instructions were taken from:
http://nycourts.gov/courts/5jd/probono/forms/Designate_Parental_Relationship_wit_h_Instructions.pdf

⁴ 1999 Op. Comm Ed No. 13905

her parent or legal guardian resides.⁵ This presumption however, is rebuttable if, after a review of the “totality of the circumstances,”⁶ it is found that the student does not reside with his or her parents and the de facto custodian has assumed care, custody, and control over the student.⁷

Meaning: as a de facto custodian, you have to prove that the child lives with you and that you care for the child and are responsible for the child’s well-being.

Accordingly legal custody or legal guardianship of a student is **not** necessary in order to establish residency within a school district. **Meaning: a school district may not require you to produce a court order of guardianship to establish residency.** A school district may however, require affidavits.⁸ An affidavit is a sworn statement that is notarized. In terms of residency, affidavits can be used to verify that the parent of the student has **relinquished** transferred “care, custody, and control” of the student to the de facto guardian. Often a school district will provide its own affidavit forms— one for the parent and one for the de fact guardian. **Therefore, it is important for a de facto custodian to call or visit the school and ask:**

- 1) Whether affidavits are used to established residency when the school district of the de facto custodian is different from the parent or legal guardian and**
- 2) If the school provides affidavit forms**

Any affidavit to establish care, custody, and control however, may require the following information:

Parent’s Affidavit

- Reasons why the student is not living with the parents (i.e. familial problems or inability to care for the child)⁹
 - *Hunting for a better school **cannot** be the reason¹⁰
- The student’s current living arrangement including whether the current living arrangement is the student’s only address¹¹
- Information about the current custodian

⁵ *Caitlin v. Sobol*, 155 AD2D 14

⁶ *Appeal of Ambris*, 31 Ed Dept Rep 41

⁷ *Caitlin v. Sobol*, supra

⁸ *Appeal of Pernel*, 30 Ed. Dept. Rep. 380; *Matter of Bunk*, 22 Ed. Dept. Rep. 640; *Matter of Tiger*, 16 Ed. Dept. 178

⁹ *Matter of Schumer*, 21 Ed. Dept. Rep. 640; *Matter of Schwartz*, 12 Ed. Dept. Rep 187; *Matter of Morello*, 9 Ed. Dept. Rep. 130

¹⁰ *Rights and Responsibilities of Young People in New York*, p. 54. Citing *In re Buglione*, 14 Ed. Dept. Rep 220 (1975); *In re Fichtner*, 22 Ed. Dept. Rep. 119 (1982); *Appeal of Kaeser*, 32 Ed. Dept. Rep. 408 (1992) (finding where the sole reason for living with others is to take advantage of the services available in the district, the student’s residences is not established)

¹¹ *Caitlin v. Sobol*, supra; *Appeal of Pinto*, 30 Ed. Dept. Rep. 374; *Matter of Staulcup*, 20 Ed. Dept. Rep. 11; *Matter of Morello*, 9 Ed. Dept. Rep. 130

- Whether the student’s living arrangement is intended to be permanent¹² **indefinite**
 - Sworn statement that the parent has relinquished care, custody, and control of the child, including the right to make decisions pertaining to the health, welfare, and education of the child
- *Note: After relinquishing care, custody, and control over a student a parent may continue to maintain a relationship with the student without jeopardizing residency determinations. ¹³

Custodian’s Affidavit

- Signature of de facto custodian
- Time period intended for the student to reside with de facto custodian
- Reason why student is residing with de facto guardian
- Who provides the student with the basic amenities such as food, clothing and all other necessities, including health insurance
- Sworn statement that the de facto guardian assumes full responsibility for all mater related to the health, welfare, and education of the student

If the school does not provide affidavit forms:

SEE FORM B (Parent’s Affidavit) and FORM C (De Facto Custodian Affidavit)

Are there any other circumstances in which the presumption that a student resides with his or her parent is rebuttable?

There are two circumstances besides a transfer of care, custody, and control of a student that would result in the rebuttal of the presumption that a student resides within the district of his or her parent. First, a student may overcome the presumption that he or she resides in the district of his or her parent if he or she is an emancipated minor. The second, is when a student is homeless or otherwise lacking a permanent address.

¹² *Appeal of Tynan*, 28 Ed. Dept. Rep. 4; *Matter of VanCurran*, 18 Ed. Dept. Rep. 523

¹³ *See Appeal of Pinto*, 30 Ed. Dept. Rep. 374

EMANCIPATED MINORS

A student becomes an emancipated minor if he or she is beyond the compulsory school age (16), is not in need or receipt of foster care, is living apart of his or her parents, and does not accept any financial support for his or her parents. Since there is **no formal court proceeding** under New York law to establish a student as an emancipated minor, a school district may not require a court order as proof. A school district may however require a student to prove to his or her status as an emancipated minor by ordering the student to provide the following:

- Proof that the student is not financed by the parent away from home and subsequently the student's alternate means of support
Provide evidence that student supports himself or herself without any assistance from parents (i.e. paystubs)
- Proof that the student does not live at home
- Documentation of the student applicant's age and immunization record
- Evidence that the applicant lives within the school district
- An explanation of the circumstances surrounding the student's emancipation

*Proof of eligibility for public assistance as an emancipated minor *should* be sufficient to establish the student's status as an emancipated minor for purposes of school admission in most cases.¹⁴

¹⁴See *Basi v. Basi*, 136 A.D.2d 945, 524 N.Y.S.2d 955 (4th Dep't 1988)

HOMELESS OR LACKING A PERMANENT ADDRESS

The other instance in which the presumption that a student resides in the district of his or her parent is rebuttable is when the student is homeless or lacking a permanent address. New York Education Law §3209 defines a homeless person as someone who is:

- Lacking a fixed regular night-time residence, or
- Living in a shelter or temporary living accommodation run by government or agency for the residency of homeless youth

If a student is determined to be homeless than the student has the right to chose schools in:

- The district in which they are sheltered as a homeless person
- The district which they used to attend prior to homelessness **or**

Appeal of the School Board's Determination

Who determines residency?

Only a school board or its designee may determine whether a student is entitled to attend school in the school district.¹⁵ Moreover a school board or its designee may only return a negative determination after the person in parental relation to the student is afforded the opportunity to submit evidence concerning the student's right to attend the school district.. If a negative determination is reached, a written notice must be provided within two business days to the person in a parental relationship to the student. The written notice must include the basis for the negative determination and the date of the exclusion from the district. Furthermore, the notice must inform the person in the parental relationship to the student of his or her right to appeal the decision to the commissioner within thirty days, and that the **procedures** for taking such as appeal may be obtained from the Department's Office of Counsel.¹⁶

Meaning:

- 1) **You have a right to an OFFICIAL determination. Don't let a school clerk tell you, you have no residency.**
- 2) **You have the right to MAKE YOUR CASE!** As a rule, try to give as much evidence as possible that the student lives with you, intends to keep living with you, are and that you are responsible for the student's well being.
- 3) **An appeal can NEVER be untimely.**¹⁷ Don't ever think it's too late to appeal a decision.

The appeal is timely if brought within 30 days of the school district's decision that is being appealed. If it is more than 30 days or close there to; suggest asking the school district to reconsider its prior decision by submitting any additional information/evidence to support the residency; if only to secure a new decision and 30 days from the 2nd decision to file an appeal.

What are the actual steps to making an appeal?

Step 1: Get the Paperwork in Order

Note: All forms provided are samples and are intended as guidelines only. It will therefore be necessary to draft original petitions and notices of petition with the appropriate corresponding information and verifications where applicable.

- 1) Notice of a petition (see **FORM D**)
- 2) Residency Appeal Petition (see **FORM E**)

All petitions Must¹⁸:

- Be signed by the petitioner with petitioner's name, post office address and telephone number.

¹⁵ 8 NYCRR 100.2(y)

¹⁶ 8 NYCRR 100.2(X)

¹⁷ *Appeal of Richards*, 25 Ed. Dept Rep 38

¹⁸ <http://www.counsel.nysed.gov/appeals/instruction.htm>

- Be verified, i.e. signed by the petitioner, in the presence of a Notary Public, establishing that the petitioner is, in fact, the person making the complaint, is familiar with the facts of the complaint, and believes them to be true
- Be typewritten, double spaced, on white 8.5 x 11 paper
- Be written so each claim is set forth in short, numbered paragraphs and
 - i. each numbered paragraph must contain clear and concise statements to show why you are entitled to relief as a result of the actions or decisions complained of and
 - ii. be sure the petition sets forth a clear statement of the actions of the school district about which you are complaining

And

- You must end the petition with a demand for relief where you tell the Commissioner what you want him to order (e.g. stop the practice, determine residency in your favor, return the student to school, etc.).
- If you wish to request an opportunity to appear before the Commissioner to present oral argument of the matter, you must include your request for oral argument in your petition.

A Petition May ALSO Include:

- A request for stay. If granted, a request for stay would allow your student to attend school while your case is decided. Basically the Commissioner temporarily sets aside the school board's decision. The request for stay should be included in the petition with its very own paragraph in which you state the facts and the legal reasons why you believe the stay should be granted. Included in the petition should be the following:

"Please take further notice that the within petition contains an application for a stay order. Affidavits in opposition to the application for a stay must be served on all other parties and filed with the Office of Counsel within three (3) business days after service of the petition."¹⁹

In the opinion of most legal experts, a request for a stay should be made. If successful, it will allow for a much quicker decision, even though only temporary, securing enrollment or reinstatement.

- 3) Evidence: what can be used to establish residency/ what should go into appeal packet attached to the petition

¹⁹ <http://www.counsel.nysed.gov/appeals/instruction.htm>

Note that the paper evidence submitted in an appeal are usually limited to papers which were submitted in the original request. Therefore the original request should contain as much information as it is possible to gather. While it may be possible to add information in the appeal, it is unlikely that they will be considered.

Eyewitness accounts that are notarized from:

- The applicant
- From the family relinquishing custody, care, and control
- The landlord, neighbors, anyone who can verify the child is at residence with the de facto custodian!

Supportive evidence linked to a place of residence such as:

- Voter registration
- Forms associated with filing an income tax

Other Supportive Evidence such as:

- Rental agreement
- Driver's license
- Utility bills
- Library card
- Dog License

***Basic Rule of Thumb: Try to make your application and your appeal packet as thick as possible with affidavits supporting your case. The more evidence the better and remember, the school district has the right to investigate on its own to determine if the child really is living with you for purposes other than school shopping.**

All documents must be personally served and it is a good idea to serve them on the Clerk of the School Board, who is generally part of the administrative staff of the district.

Form A Designate Parental Relationship

Pursuant to section 5-1551 of the New York State General Obligations Law.

1. I, _____, hereby state that I am the parent of the child/children/incapacitated person(s) named below and there are no Court Orders now in effect in any jurisdiction that would prohibit me from exercising the power that I now seek to authorize.

2. The address and telephone number(s) where I can be reached while this designation is in effect is:
Address: _____

Telephone: Home () _____; Work () _____

Other () _____.

3. I am temporarily entrusting _____, a person over the age of eighteen who resides at _____, _____, New York, telephone number () _____, the care of the following child/children/incapacitated person(s):

_____ {NAME} date of birth _____
_____ {NAME} date of birth _____
_____ {NAME} date of birth _____
_____ {NAME} date of birth _____

4. Any authority granted to the person in parental relationship pursuant to this form shall be valid (check if appropriate and initial):

_____ a. for six months days from the date of signature of this designation, or until the date of revocation, whichever occurs first (must include all parties addresses and telephone numbers and be signed by all parties in the presence of a notary public), or

_____ b. for thirty days from the date of signature of this designation, or until the date of revocation, whichever occurs first, or

_____ c. from _____ (date) until and including _____ (date), or until the date of revocation, whichever occurs first; or

_____ d. commencing upon _____ (state event) and continuing until _____, or until the date of revocation, whichever occurs first.

5. As to the above named child/children/incapacitated person(s), the person in parental relationship named above is authorized to: (cross out and initial any that do not apply)

- a. review school records;
- b. enroll in school;
- c. excuse absences from school;
- d. consent to participation in school program and/or school-sponsored activity;
- e. consent to school-related medical care*;
- f. enroll in health plans;
- g. consent to immunizations*;
- h. consent to general health care*;
- i. consent to medical procedures*;
- j. consent to dental care;

- k. consent to developmental screening; and/or
- l. consent to mental health examination and/or treatment.

* Except as prohibited by Section 2504 of the Public Health Law

Any of the above authorizations may be further limited by conditions defined by the parent, and, if limited, the limitations are written below (e.g. the parent may grant the authority to consent to a mental health examination , subject to the condition that they cannot be reached by telephone or other electronic means).

6. I further authorize the person in parental relationship to request, receive and review, and be granted full and unlimited access to, and obtain complete unredacted copies of any and all of health, medical, financial information and/or any information and/or records as defined in 45 CFR. '164.501 and regulated by the Standards for Privacy of Individually Identifiable Health Information found in 65 Fed. Reg. 82462 as protected private records or otherwise covered under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, for each child/incapacitated person listed in paragraph 3 above. I understand that the information contained in such health and medical records may include information relating to sexually transmitted diseases, acquired immunodeficiency syndrome (AIDS), AIDS-related complex (ARC) and human immunodeficiency virus (HIV), behavioral or mental health services, treatment for alcohol and/or drug abuse and/or addiction. I further understand that I may have access to and/or receive an accounting of the information to be used or disclosed as provided in 45 CFR ' 164.524, et seq. I further understand that authorizing the disclosure of this health information is voluntary; that I can refuse to sign this authorization. I further understand that any disclosure of this information carries with it the potential for an unauthorized further disclosure of this information by third parties and that such further disclosure may not be protected under HIPAA. In order to induce the disclosing party to disclose the aforesaid private and/or protected confidential information, I forever release and hold harmless said disclosing party who relies upon this instrument from any liability under confidentiality rules arising under HIPAA as a consequence of said disclosure

7. NOTICE TO PARENTS AND PERSONS IN PARENTAL RELATION: Authorization pursuant to this form is valid until the earlier of revocation by a parent or the date specified in paragraph 4 above. Any parent having signed this designation may revoke such authorization at will, and may notify relevant schools and health care providers of such revocation. A person in parental relation who receives notification from a parent of such revocation, shall forthwith notify any school, health care provider or health plan to which an authorization pursuant to this subdivision has been presented. Failure by the person in parental relation to notify recipients of the authorization or the revocation shall not make notification of revocation by the parent ineffective.

This authorization is temporary, but may be renewed by the parent(s). However, parents and persons in parental relation involved in a long-term care giving arrangement may seek a more permanent legal arrangement by commencing a judicial proceeding to appoint legal guardianship or to determine custody.

Note: All signatures below must be notarized if authorization is for a period exceeding 30 days

Dated:

(Parent signature) _____
Sworn to before me this ___ day of _____ 20__.

Notary Public

8. I, _____, am also the parent of the child/children/incapacitated person(s) named herein, there is a Court Order directing that both parents must agree on education and/or health decisions concerning such child/children/incapacitated person(s), and I hereby consent to this designation by my signature below.

The address and telephone number(s) where I can be reached while this designation is in effect is:

Address: _____

Telephone: Home () _____; Work () _____

Other () _____

Dated:

(Parent signature) _____
Sworn to before me this ___ day of _____ 20__.

Notary Public

9. I, _____, the person designated in parental relationship for the child/children/incapacitated person(s) named herein, hereby consent to this designation by my signature below.

Dated:

(Signature) _____
Sworn to before me this ___ day of _____ 20__.

Notary Public

Further Instructions for DESIGNATION OF PERSON IN PARENTAL RELATIONSHIP, pursuant to section 5-1551 of the New York State General Obligations Law.

PURPOSE OF THIS FORM:

This form will allow you to designate another person to make medical and educational decisions for your child(ren) or incapacitated person(s) in your care if you can't do so yourself for a specific period of time. This authorization can only be used for a period of up to six months. If you will need to have your child(ren)/incapacitated person(s) in the care of someone else for more than six months, you may wish to consider other options.

If there is a Court order that requires both parents to agree on education and/or health decisions regarding the child(ren), then both parents must sign the form. If not, only one parent's signature is required.

You keep all of your parental rights with this authorization and can cancel (revoke) this authorization at any time. The person you designate will be able to talk with your child(ren)'s school, teachers and medical providers, and will be able to make routine decisions. The person you designate will not be able to give consent for surgery or other major medical procedures, but will be able give consent for routine medical matters. If you do not want the person you designate to be able to make certain decisions, such as decisions concerning immunizations, you can specify that with this form. If the person you designate makes a decision concerning your child(ren)/incapacitated person(s) that you do not agree with, you can override that decision.

The person designated must agree to be a person in parental authority, and will not be required to assume responsibility for financial support of the child(ren)/incapacitated person(s). Your child(ren) will not have to change their school district if that person resides in another school district. In the event of your death or incapacitation, this designation automatically terminates.

INSTRUCTIONS FOR USING THIS FORM:

Paragraph 1: Fill in your full legal name in the space provided. If there is a Court order in effect that requires both parents to sign, the other parent will fill in their name in the space provided in Paragraph 7.

Paragraph 2: Fill in your address and telephone number(s). If this information is not included, the authorization will not be valid for more than thirty days. Use the address where you will be staying during the period this authorization is in effect, even if it is not your legal residence. For example, if this authorization is to be used while you are hospitalized, you would use the hospital's address.

Paragraph 3: Fill in the name, address and telephone number of the person whom you wish to designate as able to make educational and/or health decisions for your child(ren)/incapacitated person(s). Fill in the name(s) and date(s) of birth for EACH child/incapacitated person.

Paragraph 4: Specify how long you wish this authorization to be in effect by checking the appropriate box and initialing next to it. Remember, you can always revoke (cancel) this designation sooner if you wish. Information about how to do that is included toward the end of these instructions.

- **Use (a)** if you want this designation to be valid for six months. If you choose this option, you must provide the address and telephone number for the parent(s) and the other person, and all the signatures must be notarized.
- **Use (b)** if you want this designation to be valid for thirty days. You do not have to include addresses and telephone numbers with this choice, but it is suggested that you do so in the event that medical or educational care providers need to contact you.

- **Use (c)** if you want to use specific dates, for a period of less than or more than thirty days. Remember, this designation cannot be used for more than six months, and you must include addresses, telephone numbers and notarized signatures if you want it to be good for more than thirty days.

- **Use (d)** if you want this designation to begin when something specific, such as in the event you are hospitalized. For this, you write the specific event in the first space provided (example: When I am admitted to a hospital) and write the date or the event upon which the designation should expire in the second space (example: thirty days later or when I am released from the hospital). Again, you must include addresses, telephone numbers and notarized signatures if you want it to be good for more than thirty days.

Paragraph 5: List each of the things you wish the person you designate to be able to do. Cross out and initial EACH item that you do NOT wish to allow the person you designate to perform. If there are other things you want to prevent the person from doing, use the blank lines below the list to write those down. For example, if you want to be contacted before any mental health examination is performed, you can write that in the space provided.

Paragraph 6. This paragraph allows the person you designated to have access to your child(ren)'s/incapacitated person(s) medical records and medical information.

Paragraph 7: This provides some information regarding this form. The parent whose name appears in Paragraph 1 then signs and dates the form. If this authorization is to be in effect for a period of more than thirty days, the signature must be notarized. In this case, you need to take the form to a notary public before you sign it, and sign the form in front of that notary public, who will then also sign the form to indicate that they witnessed your signature. If don't do this, the authorization will automatically expire after thirty days.

Paragraph 8: If there is a Court order in effect that requires both parents to agree on education and/or health decisions regarding the child(ren), then the other parent will fill in their full legal name, address and telephone number in the spaces provided. As with the first parent, they do not have to provide their address and telephone number if the authorization is for a period of thirty days or less, but may wish to. They must provide this information, and sign the form in front of a notary public, if the authorization is to be good for more than thirty days. If there is no Court order in effect that requires both parents to agree, you can leave this paragraph blank.

Paragraph 9: Fill in the full legal name of the person to be designated in a parental relationship to the child(ren)/incapacitated person(s). They then sign and date the form, to show that they agree to be a person in parental relationship. If this authorization is to be good for more than thirty days, they will also need to sign the form in front of a notary public.

OTHER INFORMATION:

- Major Medical Treatment: The person you designate **CANNOT** give consent for "Major medical treatment" which is any medical, surgical or diagnostic intervention or procedure where a general anesthetic is used or which involves any significant risk or any significant invasion of bodily integrity requiring an incision or producing substantial pain, discomfort, debilitation or having a significant recovery period. This does not include: any routine diagnosis or treatment such as the administration of medications other than chemotherapy for non-psychiatric conditions or nutrition or the extraction of bodily fluids for analysis; electroconvulsive therapy; dental care performed with a local anesthetic; any procedures which are provided under emergency circumstances, pursuant to section twenty-five hundred four of the public health law; the withdrawal or discontinuance of medical treatment which is sustaining life functions; or sterilization or the termination of a pregnancy.

For example, the person designated can give consent for a child/incapacitated person to have during the procedure, such as having their wisdom teeth extracted. A parent's consent will still be required for major medical procedures.

- Revoking this designation: In order to revoke (cancel) the authorization, you simply have to tell the person you designated that you wish to do so, and they are required to notify the appropriate education and medical providers that the authorization has been terminated. While the parent is not required to do this in writing, or to notify the child(ren)/incapacitated person(s) education and medical providers that they have revoked the authorization, they may want to, so that there is no confusion. If two parents signed the form, either parent can cancel the designation by themselves, you do not need both standard dental procedures, such as fillings, but not dental surgery where they would be unconscious parents.

FORM B PARENT'S AFFIDAVIT*

STATE OF NEW YORK

COUNTY OF _____

(NAME OF **CUSTODIAN PARENT**), being duly sworn, deposes and says:

- 1. I live at (FULL ADDRESS OF **CUSTODIAN PARENT**).
- 2. (FULL NAME OF CHILD) is my (~~CHILD'S~~ RELATIONSHIP TO CUSTODIAN) and he/she has been living with me since (RELEVANT DATE).
- 3. (CHILD'S NAME) intends to reside with me for (LENGTH OF TIME).
- 4. (STATEMENT EXPLAINING THE DURATION OF THE LIVING ARRANGEMENT [PERMANENT, INDEFINITE, TO BE TERMINATED UPON A SPECIFIC DATE, ACTION OR EVENT].)
- 5. (STATEMENT OF THE REASONS THE CHILD LIVES WITH THE CUSTODIAN.)
- 6. (STATEMENT DESCRIBING ANY OTHER LOCATION(S) WHERE THE CHILD LIVES. INDICATE THE LENGTH OF TIME THE CHILD IS AT THE OTHER ADDRESS AND PROVIDE AN EXPLANATION. IF THE CHILD DOES NOT LIVE AT ANY OTHER ADDRESS, SO INDICATE.)
- 7. (STATEMENT ESTABLISHING WHO PROVIDES THE CHILD WITH FOOD, CLOTHING AND ALL OTHER NECESSITIES.)
- 8. (CUSTODIAL STATEMENT ASSUMING FULL RESPONSIBILITY FOR ALL MATTERS RELATING TO THE CHILD'S EDUCATION AND MEDICAL CARE.)
- 9. (STATEMENT OF ANY OTHER RELEVANT FACTS.)

(SIGNATURE OF CUSTODIAN)

Sworn to before me this _____ day of _____, 20__.

NOTARY PUBLIC

*Where applicable, this form should be executed individually by each custodian, if applicable.

FORM C CUSTODIAL AFFIDAVIT*

STATE OF NEW YORK
COUNTY OF _____

(NAME OF CUSTODIAN), being duly sworn, deposes and says:

- 1. I live at (FULL ADDRESS OF CUSTODIAN).
- 2. (FULL NAME OF CHILD) is my (CHILD’S RELATIONSHIP TO CUSTODIAN) and he/she has been living with me since (RELEVANT DATE).
- 3. (CHILD’S NAME) intends to reside with me for (LENGTH OF TIME).

Note: Depending on child’s age, affidavit by child may be appropriate!

4. (STATEMENT EXPLAINING THE DURATION OF THE LIVING ARRANGEMENT [PERMANENT, INDEFINITE, TO BE TERMINATED UPON A SPECIFIC DATE, ACTION OR EVENT].)

5. (STATEMENT OF THE REASONS THE CHILD LIVES WITH THE CUSTODIAN.)

6. (STATEMENT DESCRIBING ANY OTHER LOCATION(S) WHERE THE CHILD LIVES. INDICATE THE LENGTH OF TIME THE CHILD IS AT THE OTHER ADDRESS AND PROVIDE AN EXPLANATION. IF THE CHILD DOES NOT LIVE AT ANY OTHER ADDRESS, SO INDICATE.)

7. (STATEMENT ESTABLISHING WHO PROVIDES THE CHILD WITH FOOD, CLOTHING AND ALL OTHER NECESSITIES.)

8. (CUSTODIAL STATEMENT ASSUMING FULL RESPONSIBILITY FOR ALL MATTERS RELATING TO THE CHILD’S EDUCATION AND MEDICAL CARE.)

9. (STATEMENT OF ANY OTHER RELEVANT FACTS.)

(SIGNATURE OF CUSTODIAN)

Sworn to before me this _____ day of _____, 20__.

NOTARY PUBLIC

*Where applicable, this form should be executed individually by each custodian, if applicable.

FORM D (Notice of Petition)

STATE OF NEW YORK
STATE EDUCATION DEPARTMENT

In the Matter of (PETITIONER'S NAME),
on behalf of (CHILD'S NAME) from
action of the Board of Education
of the _____ School
District regarding the denial of
admission on the basis of residency.

NOTICE:

You are hereby required to appear in this appeal and to answer the allegations contained in the petition. Your answer must conform with the provisions of the regulations of the Commissioner of Education relating to appeals before the Commissioner of Education, copies of which are available from the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

If an answer is not served and filed in accordance with the provisions of such rules, the statements contained in the petition will be deemed to be true statements, and a decision will be rendered thereon by the Commissioner.

Please take notice that such rules require that an answer to the petition must be served upon the petitioner, or if he be represented by counsel, upon his counsel, within 20 days after the service of the appeal, and that a copy of such answer must, within five days after such service be filed with the Office of Counsel, New York State Education Department, State Education Building, Albany, New York 12234.

FORM E²⁰ (Residency Appeal Petition)

STATE OF NEW YORK
STATE EDUCATION DEPARTMENT

_____X

VERIFIED
PETITION

In the Matter of [name of petitioner],
on behalf of [name of child] from action of the Board of
Education of the [name of school district] regarding the
denial of admission on the basis of residency.

_____X

TO THE COMMISSIONER OF EDUCATION:

1. My name is [name of petitioner] and I reside at [address of petitioner] within the School District.
2. My relationship to [name of child] is [relationship].
3. [Name of child] resides at [address of child], within the [name of school district].
4. [Name of child] has resided within the [name of school district] for [length of time].
5. [Name of child] intends to reside at [address of child] for [length of time].
6. [Name of child] resides with [name of petitioner] at [address of petitioner].
7. Provide a statement of any other location (s) where the child lives. Indicate the length of time the child is at the other address and provide an explanation. If the child does not live at any other address, indicate that.

IF THE CHILD LIVES WITH SOMEONE OTHER THAN HIS/HER PARENTS OR LEGAL GUARDIAN BUT IS NOT AN EMANCIPATED MINOR, COMPLETE PARAGRAPHS 8-11.

8. State the reason the child is not living with a parent or legal guardian.

9. [Name of appropriate individual] is supporting [name of child] and provides food, shelter, and clothing.
10. [Name of appropriate individual] exercises control over [name of child] activities and

²⁰ 25B West's McKinney's Forms Education Law § 3202 Form 4

behavior.

11. [Name of child]'s parent(s) [has/has not] surrendered parental control over [name of child] to [name of appropriate individual].

IF THE CHILD IS OVER 16 AND SELF SUPPORTING, COMPLETE PARAGRAPH 12.

12. [Name of child] was born on [date of birth] and is over the compulsory school age. (if contested, provide proof of age as an exhibit.)

13. Statement describing how the child is supporting himself/herself (attach separate page if necessary). (If contested, attach proof of means of support [i.e., pay stub, letter from the Department of Social Services, etc.])

14. [Name of child] is over five and under twenty-one years of age and [has/has not] received a high school diploma.

15. Statement describing the nature of child's relationship with parents, i.e., last contact, frequency and nature of contacts, parents' whereabouts, etc..

16. Statement describing approximate date and reasons the child began living apart from parents.

17. On [date], [name of child] made a request for admission to the School District.
18. [Name of child]'s request was denied by respondent on [date].
19. [[Name of child] has not been attending school or receiving any educational services since [date]/[Name of child] has been attending school since [date]].

WHEREFORE, [name of petitioner] respectfully requests:

1. Interim relief permitting [name of child] to attend the [name of school district] pending a decision on the merits of this appeal, and
2. A determination that [name of child] is a resident of the [name of school district] and is entitled to attend school district without the payment of tuition.
3. Such other relief as the Commissioner deems just and proper.

Dated: [date of petition]

NAME: [name]

ADDRESS: [address]

PHONE NUMBER: [phone number]

ATTACH ANY SUPPORTING AFFIDAVITS AND EXHIBITS