

## LEGAL FACT SHEET

### 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.<sup>1</sup>

**Legal Custody or Guardianship is NOT NECESSARY** to enroll children in a public school. If the kinship caregiver has legal custody or guardianship, schools are legally obligated to accept the court order as proof of residency and care and control and to enroll the child (Family Court Act 657 and Domestic Relations Law 74). **If the caregiver does not have a court order of custody or guardianship, school districts are still 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 guardian<sup>2</sup>. However, the presumption can be overcome by a "totality of the circumstances" showing that the child does not reside with his/her parents<sup>3</sup> and that the care and control of the child is now exercised by the caregiver<sup>4</sup>. 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<sup>5</sup>. 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<sup>6</sup>.

### 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 [affidavits](#) on the Kinship Navigator website. The Kinship Navigator provides blank affidavit forms and also this guide on [How to Fill Out a Custodial Affidavit](#).

<sup>1</sup> NYS Education Law Section 3292. Public schools free to resident pupils; tuition from non-resident pupils.

<sup>2</sup> Catlin v. Sobol, 155 AD 2d 24

<sup>3</sup> Appeal of Ambris, 31 Ed Dept Rep 41

<sup>4</sup> Catlin v. Sobol

<sup>5</sup> Appeal of Pinto, 30 Ed Dept Rep 374

<sup>6</sup> 8 NYCRR 100

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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 and medical related decisions for the child. See the legal fact sheet on Parental Designations for information about this form.

The [Parental Designation Form](#) 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](http://www.health.state.ny.us/vital_records/birth.htm).

For more information, visit the state education department's student support services at <https://www.p12.nysed.gov/sss/>. Look for information on attendance and residency.

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Charities Family and Community Services and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Charities Family and Community Services program, funded by the New York State Office of Children and Family Services. Catholic Charities Family and Community Services is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.