

How to enroll a child in school when you are not the parent or guardian



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Disclaimer — Please read

This packet of information was prepared to answer general questions and give general advice about the law in Illinois. This packet may or may not also include forms that you can use. When reading this packet or using the forms, keep in mind that the advice, information, and forms were created to assist readers with general issues, not specific situations, and as such does not replace the advice or representation of an attorney licensed to practice in the State of Illinois. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to whether the use of this packet will achieve the result you desire and disclaim any responsibility for the consequences of any form prepared or action taken in reliance upon the information in this packet. If you are concerned or do not understand whether this packet will be of assistance to you or will apply to your specific situation, you should talk to an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer,

Look for these symbols to tell you when to:



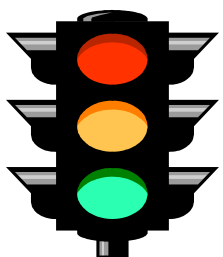
STOP!

You need legal representation or advice to continue.



USE CAUTION!

This is very important so pay attention.



GO!

You can proceed to the next step.



CHECK IT OUT!

This issue is discussed in another packet.

Warning to all readers



Before you proceed with using this packet, you should ask yourself the following questions:

1. Have I tried to consult a private attorney?

No self-help publication, packet, or form can replace the advice and experience of a licensed attorney. An attorney may not cost as much as you think, especially if you just need to ask questions. Before you proceed on your own, call several local attorneys, compare prices, and find out whether you can pay an attorney or not.

2. If I cannot afford an attorney, have I tried to find a free source of legal assistance?

There are several agencies which provide legal assistance for free to certain groups of individuals. Some of these agencies are listed to the right. While they may not be able to help you with a particular problem, it does not hurt to call them to find out before you proceed on your own.

3. Is this something that I can do on my own?

If you have trouble following directions, or have difficulty reading, writing, or speaking in public, you may not be able to follow the directions and advice in this packet. If this is the case, find a friend or someone who can help you before you proceed on your own.

Free sources of legal help

Land Of Lincoln Legal Assistance

Serves the 65 southernmost counties in Illinois

Toll Free: 877-342-7891

For additional information, you may

visit their website at:

[Http://www.lollaf.org](http://www.lollaf.org)

Prairie State Legal Services

Serves most of northern and north central Illinois outside of Cook County

815-965-2134

800-0617

Coordinated Advice and Referral Program for Legal Services

serving Cook County

312-738-9494

Will County Legal Assistance

Serving Will County

815-727-5123



It is very important that you read each section of this packet completely before you take any action in regard to a legal problem including using any forms that supplement this packet.

Because this packet discusses terms and actions you are likely not familiar with, you will need to refer back to the following sections from time to time when reading this packet:

Who these people are

This section describes the different people/agencies you may encounter when trying to resolve a problem at a school. Make sure you understand who these people are and what role they play.

What these legal terms mean

This section defines commonly used legal terms in words that you can understand. To use the rest of this packet and any supplemental forms, you need to understand exactly what these terms mean.

When is a child a resident of the school district?

This section discusses whether the child you are enrolling can be enrolled tuition free. You should read this section to see where you stand before you decide what actions you may or may not take on your own.

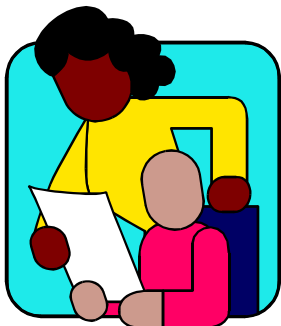
What to do if the school won't accept an Affidavit

This section discusses what steps you can take to try to resolve a dispute with the school over enrolling a child as a non-parent. You should read this section before taking any action on your own.

Myths and Tips

These two sections discuss commonly held misbeliefs about the law and steps that you should take (or not take) that could make your task easier.

Who these people are



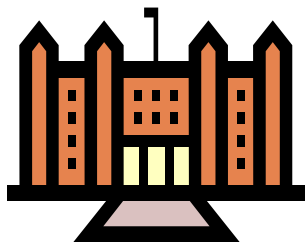
Principal

The principal is the person who is in charge of a particular school. The teachers, custodians, and librarians report to the principal. If you have a problem with the way your child(ren) is/are being treated or with the type of instruction they are being given by their teacher(s), you should speak first with the principal of the school.



Superintendent

The superintendent is the person who is in charge of all of the schools in a particular school district. The principals of each of the schools in the district report to the school superintendent. If you have a problem with a principal of a school within a particular district, you should talk to the school superintendent.



School Board

The school board is an elected body of citizens which oversees the school superintendent, the schools, teachers, and all school personnel. The school board approves the contracts of all school personnel and decides on matters such as textbooks, school construction salaries, and expenses. If you have a problem with a school superintendent, you should talk to the school board.



Illinois State Board of Education

The Illinois State Board of Education is the agency which supervises public schools from pre-school through grade 12, adult schools, and vocational schools. The State Board of Education approves teacher training, certifies teacher placement and audits claims for funds. Most importantly, the State Board of Education gives legal counsel to school districts on the School Code.

Who can use this packet

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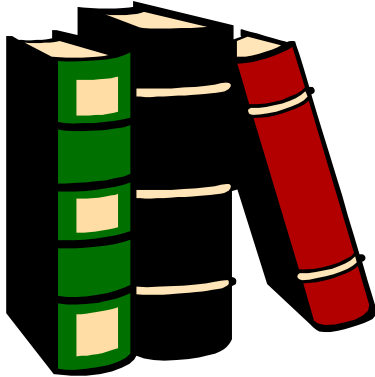
This packet deals only with the issue of whether a person who is not a natural or adoptive parent of a child can enroll that child in school without legal custody or guardianship and without paying tuition when the natural parent(s) reside outside the school district.

This packet does not discuss any other enrollment issues or any other issues regarding non-parent's rights including how to get legal guardianship or legal custody of a child.

This packet also discusses the residency law which went into effect on January 1, 1997. This law expressly provides that any adult can enroll a child in school if they can demonstrate that they assume and exercise legal responsibility for a child, that they provide the child with a regular fixed night time residence, and that they do not have the child for the primary purpose of allowing the child to attend school tuition free.



Please note that this law also provides **criminal penalties** for persons who knowingly attempt to enroll a child who is a non-resident of a district or provide false information in an attempt to enroll a child who is a non-resident of a district.

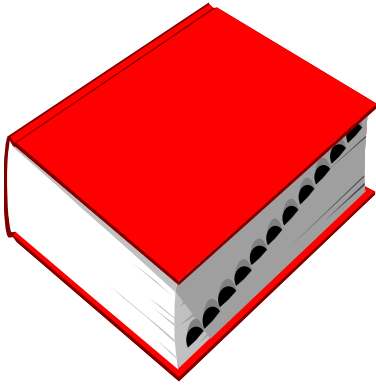


Disclaimer: Please Read !!

The following is a list of publications which discuss the issues of school law. Some of these publications are specific to Illinois and others are more general in nature. Because of this and because of unanticipated changes in the law, the School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet make no claim as to the accuracy of the content of these publications including whether they will achieve the result you desire. The School of Law at Southern Illinois University and the person, institution, or agency who gave you this packet disclaim any responsibility for the consequences of any action taken in reliance upon the information in these publications. If you are concerned or do not understand whether a particular publication will be of assistance to you or will apply to your specific situation, you should talk to the publication's publisher or an attorney who is licensed to practice in the State of Illinois. If you have any questions about this disclaimer, call the Self Help Legal Center.

At the time we printed this packet, there were no self help publications which we were aware of which discussed this topic. Consult your local public or law library to see if there are any new publications on this topic. For the most recent information, consult the Self Help Legal Center.

What these legal words mean



affidavit

A sworn statement by a person. Lying in an affidavit can lead to a charge of perjury.

custody

The parent who makes the decisions in the child's life regarding issues of health care, education, religion, and lifestyle has custody of the child. It is not who has physical control over the child or where the child resides.

guardian of a child

A person who by court order is given both the power and the duty of taking care of a minor child including managing the child's property, enforcing the child's rights, and making decisions about the child's health, education, and welfare.

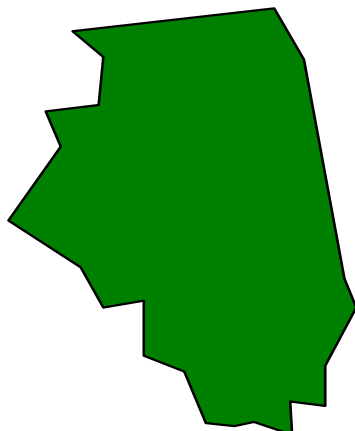
parent

The mother or father of a child or the person(s) who legally adopted a child.

residence

Where a child resides. For school purposes, the place where the child regularly sleeps.

Summary of the law in this area



The one law which governs most of the area of school and school districts is the Illinois School Code. It can be found at Chapter 105, Act 5 of the Illinois Compiled Statutes.

Whether a child is a resident of a district and, therefore, can be enrolled without paying tuition is discussed in Chapter 105, Act 5, Section 10-20.12b of the Illinois Compiled Statutes.

The law in Illinois expressly provides that any adult can enroll a child in school if they have "legal custody" of the child. Legal custody, however, is defined as either

- 1) custody exercised by a natural or adoptive parent with whom the child resides; **OR**
- 2) custody granted by an order of a court to a person with whom the child resides unless custody was granted solely for the purpose of enrolling the child in school in the district; **OR**
- 3) custody under a statutory short-term guardianship, provided that within 60 days of the child's enrollment a court is entered that established a permanent guardianship and grants custody to a person with whom the child resides unless custody was granted solely for the purpose of enrolling the child in school in the district; **OR**
- 4) custody exercised by an adult caretaker who is receiving aid under the Illinois Public Aid Code for the child who resides with that adult caretaker for purposes other than enrolling the child in school in the district; **OR**
- 5) custody exercised by an adult who demonstrates that, in fact, he or she has assumed and exercises legal responsibility for the child and provides the child with a regular fixed night time abode for purposes other than to have access to the educational programs of the district.

It is this last provision, #5, which does not require a court order, that is the subject of this packet.

When is a child a resident of the school district? 11



If you are not the natural or adoptive parent of a child whose parents reside outside the school district and you attempt to enroll that child in school, a school will often request that either obtain legal guardianship or legal custody of the child to enroll him/her in school or pay tuition because the child's parents reside outside the district. The law, however, says that this practice is wrong.

A school district is required to allow all children to enroll in school tuition free regardless of age and regardless of who presents them for enrollment as long as they reside in the school district.

The real question, therefore, is does the child reside within the district? To answer this question, you need to answer 3 questions.

Question 1. Does the child actually live in the district?

Children presumptively reside in the district where their parents reside. However, for school purposes, this presumption may be rebutted by circumstances showing a different residence. A child, therefore, who wants to enroll in a school district different than the one in which his/her parent(s) reside will have to show why the presumption should not apply to him/her.

A few examples of when the courts in Illinois have held that the presumption would not apply to a child are when:

- a) the parents have relinquished all control of the child, or
- b) the parent or guardian lives in another state and exercises no control over the child, or
- c) the child's family has no permanent residence but travels in search of work.

A problem, occurs, however in trying to determine when the parents have "relinquished all control" over the child.

Question 2: Has control over the child been transferred by order of the court or by the voluntary act of the parents to someone who resides in the district?

As stated before, a child, regardless of age, does not need to be presented by a person with legal custody or guardianship to enroll in school. However, if the parents of the child reside outside the school district, the child must show that the parents have relinquished all control over him/her in order to to overcome the presumption that he/she resides in the school district where their parents live,

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The question remains, however, how to show that a parent has "relinquished" all control over a child. Obviously, if a person has a court order showing that he/she has the legal custody of a child, this would be proof that the parent has relinquished all control over the child. This is the reason that some school districts require that the child be living with a person with legal custody or guardianship before they will allow the child to be enrolled.

The courts of Illinois, however, have rejected the idea that a child whose parent resides outside the school district must be living with a legal guardian or a person with legal custody who lives in the school district to be considered as "residing in the district". The Illinois State Board of Education has rejected this idea as well (see letter in the supplement to this packet).

The law rather looks at the entire set of circumstances surrounding the child's residency. One of the ways which a child and/or a person without legal guardianship or legal custody of a child can make these circumstances known to the school is through an affidavit. You will find such an affidavit attached to the back of this packet.

Please keep in mind, however, that when this "transfer" or "relinquishment" is given by a parent solely for the purpose of allowing their child to attend school in another district without paying tuition, the non-parent or child may be allowed to enroll, but will have to pay out of district tuition.

Question 3. Has the child been transferred to the school district for the sole purpose of attending school in that district without paying tuition?

The courts of Illinois have held that a child's residence in a school district other than that in which his parents reside is sufficient to entitle the child to attend school tuition free in the district in which he resides so long as residence was not established solely to avoid paying out of district tuition.

Therefore, if a child whose parents reside outside the district is brought to a district for the sole purpose of attending school in that district, even if the child can show that control has been voluntarily "transferred" or "relinquished" by the parents, the child cannot attend the school tuition-free. For this reason, persons who are attempting to enroll a child who resides in a district other than his parents must be able to show that the child is not living with them solely for the purpose of attending schools in that district but rather, for some other reason(s).

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The residency law:

The law in Illinois expressly provides that any adult can enroll a child in school if they have "legal custody" of the child. One of the definitions of legal custody, however, is:

"custody exercised by an adult who demonstrates that, in fact, he or she has assumed and exercises legal responsibility for the pupil and provides the pupil with a regular fixed night time abode for purposes other than to have access to the educational programs of the district."

In the supplement to this packet you will find an Affidavit which meets the requirements of this new law. If you complete this Affidavit, you will be considered by the school district to be the legal custodian of the child you are attempting to enroll. Unless **all** the statements in the Affidavit, both those you write yourself and those that are already written, are true, do not use this Affidavit to enroll a child.

The same law that allows you to use this Affidavit to enroll a child provides criminal penalties for persons who knowingly attempt to enroll a child who is a non-resident of a district or provides false information in an attempt to enroll a child who is a non-resident of a district. The Affidavit in the supplement is a sworn statement by you that the items listed in the Affidavit are true.



Consequently, if any of the items listed in the Affidavit do not apply to your situation, you should not use the Affidavit as it may be used against you in a criminal proceeding as supplying false information in an attempt to enroll a child.

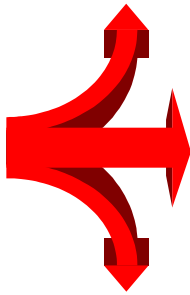
You should also know that there is a line in the Affidavit stating that you assume legal responsibility for the child. While the courts of Illinois have yet to interpret this provision, it could mean that you would be responsible for any financial or other charges (like damaged school property) that the child incurs while attending school. If you are concerned as to what this provision means, you should seek the advice of an attorney.



Have all persons who are signing the Affidavit sign in the presence of a Notary Public. The Notary Public should use the second page of the Affidavit as there is a blank for the custodian, child, and both parents. You can find a Notary Public at local banks, the courthouse, or even the library. You should call first to find out if there is a charge for a Notary Public.

What to do if the school won't accept an Affidavit of Residency

What to do if the school does not accept the Affidavit:



Sometimes you will encounter a school district which will not accept the attached form and will still require legal custody or guardianship for you to enroll the child. If you run into such a situation, you should try the following:



TRY THIS: Remind the school of the law which went into effect January 1, 1997 which states that any adult can enroll a child in school if they can demonstrate that they assume and exercise legal responsibility for a child; that they provide the child with a regular fixed night time residence, and that they do not have the child for the primary purpose of allowing the child to attend school tuition free. Show them that the Affidavit in the supplement meets this requirement.



IF THIS DOESN'T WORK: call the Illinois State Board of Education at 1-217-782-6601 and request assistance.

Your rights if the school later charges you for out of district tuition or refuses to allow the child to attend school

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Acceptance by the school of the enclosed Affidavit does not mean that the school still cannot later disagree and bill you for out of district tuition or refuse to allow the child to continue to attend school. If the school does this, you have **10 days** to request a hearing from the school superintendent. You must send this request by certified mail, return receipt requested. In the supplement to this packet you will find a form that you can use to request such a hearing. The district then has 20 days to hold a hearing before a hearing officer selected by the local board of education.

Until the hearing is completed, you have the right to keep the child in school. However, if you lose at the hearing, you may have to pay tuition for the days the child was in school.

You have the right to legal representation at your hearing although it is not required. You also have the burden of proving that the child is a resident of the school district. Remember, you must be able to prove that:

- 1) The child lives with you, sleeps at your house each night, and that you accept legal responsibility for the child; AND**
- 2) Control over the child has been transferred by order of the court or by the voluntary act of the parents to you; AND**
- 3) The child was not given to you for the primary purpose of allowing the child to attend school tuition free in the district where you live.**

Within 5 days the hearing officer must release his/her decision. If you disagree with the decision you have 5 days to send your objections to the superintendent, again by certified mail, return receipt requested. The local school board of education then will make the final decision. If the school board finds that the child is a non-resident, you will have to either pay the tuition to keep the child in school or remove him/her from school.



If you disagree with the school board's final decision, you should seek the services of an attorney.



3 Commonly held beliefs about enrolling children in school which are not true:

I must be a parent to enroll a child in school

No, you don't. Any adult can enroll a child in school as long as they meet the requirements set forth on pages 11-13.

I must get guardianship or legal custody to enroll a child in school

No you don't. A person does not need to be a parent nor does he/she have to have legal custody or guardianship to enroll a child in school.

The parents of the child must live in the school district for the child to enroll in the district tuition free

Wrong. It is where the child, not the child's parents, lives that determines whether a child is a resident of the school district.



Be patient

If you are a non-parent trying to enroll a child in school the first thing you should do is be patient. Look at the situation from the school's point of view. Most of the time at least one parent shows up to enroll a child. As such, the staff charged with the responsibility of processing enrollment applications probably has no idea what to do in your situation. Be calm, explain what the situation is and be ready to have to explain yourself several times. Whatever you do, don't show up on the day of enrollment thinking that your enrollment will take just as long as everyone else — it won't. As a non-parent, enrolling a child will take longer and probably will require several trips (and phone calls) to the school.

Be prepared

As stated above, most school personnel have no idea how to handle the situation you are presenting them — a non-parent with no legal custody or guardianship attempting to enroll a child in school — . Have the Affidavit completed with all the signatures filled out when you show up on the day of enrollment. You should keep this packet handy in case you have to explain yourself and your situation several times.

Get help if you need it

If you have trouble following directions, doing things on time, filling out forms, or keeping track of paperwork, trying to enroll a child as a non-parent may be much more stressful than it needs to be. If, however, you have a friend you can help you do these things, the job will be a lot easier. Keep in mind, however, that a friend cannot take the place of the advice and experience of an attorney licensed to practice in the State of Illinois. Consequently, if you need legal advice or if dealing with the school proves to be too difficult a task for you, talk to an attorney.