

# Educational Consent and School Enrollment Laws: Why They Matter

For the majority of American children attending public schools, school enrollment is truly a non-issue. Our parents or guardians sign the necessary paperwork, and off we go to class, soccer practice, and art club. We ride on the school bus, attend field trips, and try out for the school play without even a second thought. Yet for the nearly six million children living in households headed by grandparents or other relatives, school enrollment and the related consent issues pose enormous concerns and are sometimes experienced as insurmountable barriers.

Only twenty-one states have enacted legislation enabling relative caregivers without formal custody or guardianship to enroll a child in school or consent to co-curricular and extra-curricular activities. Further, some of these laws lack provisions permitting relative caregivers to enroll children in school without a parent or legal guardian's signature. Such laws negatively impact informal kinship caregivers that either cannot locate the legal parent or guardian or hesitate to pursue options such as guardianship for fear of further disrupting an already volatile family dynamic.

A nation that prides itself on liberty and freedom should heed the words of ancient philosopher Epictetus: "Only the educated are free." Every state should enact comprehensive legislation protecting the educational needs of children in kinship care.

## The Laws at a Glance

Twenty-one states (CA, CT, DE, HI, ID, IN, IA, LA, MD, MO, NJ, NM, NY, NC, OH, OK, RI, SC, UT, VT, and WY) have enacted school enrollment laws. Some states stipulate that relative caregivers are specifically empowered to enroll a child in school, while others employ more general terminology. In Idaho, for example, parents or guardians have the opportunity to "delegate...educational care" in certain situations. A few states go so far as to enumerate the type of activities for which educational consent might be necessary.

Many school enrollment statutes convey an underlying fear that parents or guardians might attempt to use the statute to side-step districting rules, in essence abusing the flexibility allowed to relative caregivers as a vehicle to "shop" for particular schools with better reputations or educational services. To allay such fears, state laws impose some restrictions. The most common restrictions declare that a child's residency with a caregiver cannot be for the purpose of: attending a particular school; participating in athletics at a particular

school; or taking advantage of special services or programs offered at a particular school. Delaware forbids a child to reside with a relative if the residency is for the purpose of attending a particular school, but it will also consider a caregiver's school district as one factor during a child's placement determination.

Other statutes address the same concern by enumerating the reasons that children may live with relatives. For example, a child in Rhode Island may only enroll in a relative caregiver's school district if he or she has no living parents or has been abandoned or abused by his or her parents. Other states, such as Missouri, reference "orphan children, children with only one parent living, and children whose parents do not contribute to their support." Some states mandate that relatives are not paid for their services; some require that the relative placement be a stepping stone to permanency or guardianship. Though the potential for abuse is a real concern, it is crucial that states do not impose overly-narrow restrictions that might inadvertently exclude children legitimately needing educational services.

### **How Do Statutes Identify Kinship Caregivers?**

Many school enrollment statutes do not overtly reference kinship caregivers. In fact, Maryland is the only statute specifically targeted to "relatives providing informal kinship care." Other statutes use terms such as "caregiver" (CA, HI, NM, WY); "person" (ID, NJ, OH); "person acting in loco parentis" (RI); and "adult domiciliary" (NC). Missouri's statute is unique because it is child-centered-framing the school enrollment issue around the child's right to attend school in "any district in the state in which they have a permanent or temporary home without paying a tuition fee.

### **All States Require Written Affidavits or Consent Forms**

Eighteen states (all but RI, MO, and VT) require a written affidavit or consent form. Most states clearly enunciate the terms and conditions for such affidavits by statute. Almost all states also clarify that a child's parents or legal guardian has final decision-making authority in regards to the child's educational needs. The parent or guardian's signature is typically required on an affidavit unless reasonable efforts to locate the parent or guardian have failed. Three states (CA, HI, LA) may require additional evidence that the caregiver lives at the address provided in the affidavit. A few states' affidavit requirements stand out for the following reasons:

- New Mexico requires that the affidavit be notarized and include the statement: "Use of this affidavit is authorized by the Kinship Guardianship Act."

- Maryland requires that the affidavit to be accompanied by "supporting documentation of one or more serious family hardships" and allows the county superintendent to verify any facts by conducting an audit.
- Indiana uses a "legal settlement" approach as opposed to an explicit school enrollment approach. The legal settlement of a student living apart from his or her parents is in the attendance area of the caregiver's residence.

## **States That Have Imposed Time Limits or Revocation Policies**

Nearly half of all states with school enrollment laws impose a time limit and/or enunciate a revocation policy. The time limit on a caregiver affidavit will generally last from six months (NY) to three years (ID). In several states (CA, IA, LA, NM, OH, and WY), the affidavit is invalid after one year. A few states are less specific, indicating only that time limits may be written into any agreement (DE) or that the affidavit is automatically void if any information within it proves false (NC, SC, UT). At least six states proclaim that relatives must immediately notify authorities if the child no longer lives with them (CA, LA, MD, NM, OH, and WY). The delegation of authority to a relative caregiver is always superseded by a parent or guardian's decision to rescind the delegated consent.

## **States That Provide Immunity for Good Faith Reliance on an Affidavit**

Eight states (DE, HI, MD, NJ, NC, OK, SC, and UT) penalize persons making false statements in caregiver affidavits. Penalties range from disorderly persons offenses (NJ) to \$1,000 fines and possible criminal prosecution (DE). Five states (DE, HI, LA, OH, and NY) also indicate that school officials relying in good faith on a caregiver affidavit will not be penalized in any way if false information is provided in the affidavit.

## **Illinois: An Alternative Approach to School Enrollment Laws**

Though considered a trailblazer in kinship care policy, Illinois does not yet have a school enrollment statute. Nevertheless, the state makes a detailed "How To" available for download on the Department of Aging web site. Grandparents can refer to the provided tips themselves and/or present them to school officials who may not be as clear about the rights of grandparents to enroll their grandchildren in school (no guardianship arrangement is required in Illinois).

If a state legislature is unable or unwilling to enact a school enrollment statute at this time, kinship care in other states can look to Illinois as an example of an innovative strategy for ensuring the educational success of children in informal kinship care in the absence of formal legislation.

## Conclusion

Twenty-one (less than half!) is an unsatisfactory number of states with educational consent and school enrollment laws in place. As more relatives step up to the plate to care for children, law and public policy needs to support them in meeting their relative child's most basic needs and freedoms. Access to education should be a non-negotiable priority for legislatures and policymakers considering kinship care reform.

<sup>1</sup>See e.g., IOWA CODE ANN. § 282.18 (2006) (requiring the parent or guardian to "send notification to the district of residence and the receiving district...that the parent or guardian intends to enroll the parent's or guardian's child in a public school in another district"). But see CAL. [FAM.] CODE § 6552 (2006) (allowing informal kinship caregivers to complete the caregiver affidavit form without the signature of the child's parent or legal guardian).

<sup>2</sup>See IDAHO CODE ANN. § 15-5-104 (2006).

<sup>3</sup>See e.g., OHIO REV. CODE ANN. § 3313.64 (2006) (indicating that students attending school pursuant to the statute are eligible to participate in all "student activities," including interscholastic athletics); HAW. CODE R. § 302A-482 (2006) (referring to both "curricular and co-curricular school activities").

<sup>4</sup>HAW. CODE R. § 302A-482 (2006).

<sup>5</sup>DEL. CODE ANN. TIT. 14, § 202 (2006).

<sup>6</sup>R.I. GEN. LAWS § 16-64-1 (2006).

<sup>7</sup>MO. ANN. STAT. § 167.151 (2) (2006).

<sup>8</sup>MD. CODE ANN. [EDUC.] § 7-101 (2006).

<sup>9</sup>MO. ANN. STAT. § 167.151 (2) (2006).

<sup>10</sup>N.M. STAT. ANN. § 40-10B-15 (2006).

<sup>11</sup>See MD. CODE ANN. [EDUC.] § 7-101 (2006).

<sup>12</sup>See IND. CODE ANN. § 20-26-11-2 (2006).

<sup>13</sup>See generally <http://www.state.il.us/aging/1intergen/grg.htm>, for more information on Illinois' Grandparents Raising Grandchildren program.