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Title XXXIII. Education--Libraries

▢ [Chapter 3313](#). Boards of Education ([Refs & Annos](#))

▢ Administration of Schools

→ **3313.64 Definitions; residency for attendance purposes; acceptance of certain tuition requirements; tuition waivers; enforcement**

(A) As used in this section and in [section 3313.65 of the Revised Code](#):

(1)(a) Except as provided in division (A)(1)(b) of this section, “parent” means either parent, unless the parents are separated or divorced or their marriage has been dissolved or annulled, in which case “parent” means the parent who is the residential parent and legal custodian of the child. When a child is in the legal custody of a government agency or a person other than the child's natural or adoptive parent, “parent” means the parent with residual parental rights, privileges, and responsibilities. When a child is in the permanent custody of a government agency or a person other than the child's natural or adoptive parent, “parent” means the parent who was divested of parental rights and responsibilities for the care of the child and the right to have the child live with the parent and be the legal custodian of the child and all residual parental rights, privileges, and responsibilities.

(b) When a child is the subject of a power of attorney executed under [sections 3109.51 to 3109.62 of the Revised Code](#), “parent” means the grandparent designated as attorney in fact under the power of attorney. When a child is the subject of a caretaker authorization affidavit executed under [sections 3109.64 to 3109.73 of the Revised Code](#), “parent” means the grandparent that executed the affidavit.

(2) “Legal custody,” “permanent custody,” and “residual parental rights, privileges, and responsibilities” have the same meanings as in [section 2151.011 of the Revised Code](#).

(3) “School district” or “district” means a city, local, or exempted village school district and excludes any school operated in an institution maintained by the department of youth services.

(4) Except as used in division (C)(2) of this section, “home” means a home, institution, foster home, group home, or other residential facility in this state that receives and cares for children, to which any of the following applies:

(a) The home is licensed, certified, or approved for such purpose by the state or is maintained by the department of youth services.

(b) The home is operated by a person who is licensed, certified, or approved by the state to operate the home for such purpose.

(c) The home accepted the child through a placement by a person licensed, certified, or approved to place a child in such a home by the state.

(d) The home is a children's home created under [section 5153.21](#) or [5153.36 of the Revised Code](#).

(5) "Agency" means all of the following:

(a) A public children services agency;

(b) An organization that holds a certificate issued by the Ohio department of job and family services in accordance with the requirements of [section 5103.03 of the Revised Code](#) and assumes temporary or permanent custody of children through commitment, agreement, or surrender, and places children in family homes for the purpose of adoption;

(c) Comparable agencies of other states or countries that have complied with applicable requirements of [section 2151.39 of the Revised Code](#) or, as applicable, [sections 5103.20 to 5103.22](#) or [5103.23 to 5103.237 of the Revised Code](#).

(6) A child is placed for adoption if either of the following occurs:

(a) An agency to which the child has been permanently committed or surrendered enters into an agreement with a person pursuant to [section 5103.16 of the Revised Code](#) for the care and adoption of the child.

(b) The child's natural parent places the child pursuant to [section 5103.16 of the Revised Code](#) with a person who will care for and adopt the child.

(7) "Preschool child with a disability" has the same meaning as in [section 3323.01 of the Revised Code](#).

(8) "Child," unless otherwise indicated, includes preschool children with disabilities.

(9) "Active duty" means active duty pursuant to an executive order of the president of the United States, an act of the congress of the United States, or [section 5919.29](#) or [5923.21 of the Revised Code](#).

(B) Except as otherwise provided in [section 3321.01 of the Revised Code](#) for admittance to kindergarten and first grade, a child who is at least five but under twenty-two years of age and any preschool child with a disability shall be admitted to school as provided in this division.

(1) A child shall be admitted to the schools of the school district in which the child's parent resides.

(2) A child who does not reside in the district where the child's parent resides shall be admitted to the schools of the district in which the child resides if any of the following applies:

(a) The child is in the legal or permanent custody of a government agency or a person other than the child's natural or adoptive parent.

(b) The child resides in a home.

(c) The child requires special education.

(3) A child who is not entitled under division (B)(2) of this section to be admitted to the schools of the district where the child resides and who is residing with a resident of this state with whom the child has been placed for adoption shall be admitted to the schools of the district where the child resides unless either of the following applies:

(a) The placement for adoption has been terminated.

(b) Another school district is required to admit the child under division (B)(1) of this section.

Division (B) of this section does not prohibit the board of education of a school district from placing a child with a disability who resides in the district in a special education program outside of the district or its schools in compliance with Chapter 3323. of the Revised Code.

(C) A district shall not charge tuition for children admitted under division (B)(1) or (3) of this section. If the district admits a child under division (B)(2) of this section, tuition shall be paid to the district that admits the child as follows:

(1) If the child receives special education in accordance with Chapter 3323. of the Revised Code, the school district of residence, as defined in [section 3323.01 of the Revised Code](#), shall pay tuition for the child in accordance with [section 3323.091](#), [3323.13](#), [3323.14](#), or [3323.141 of the Revised Code](#) regardless of who has custody of the child or whether the child resides in a home.

(2) For a child that does not receive special education in accordance with Chapter 3323. of the Revised Code, except as otherwise provided in division (C)(2)(d) of this section, if the child is in the permanent or legal custody of a government agency or person other than the child's parent, tuition shall be paid by:

(a) The district in which the child's parent resided at the time the court removed the child from home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first;

(b) If the parent's residence at the time the court removed the child from home or placed the child in the legal or permanent custody of the person or government agency is unknown, tuition shall be paid by the district in which the child resided at the time the child was removed from home or placed in legal or permanent custody, whichever occurred first;

(c) If a school district cannot be established under division (C)(2)(a) or (b) of this section, tuition shall be paid by the district determined as required by [section 2151.362 of the Revised Code](#) by the court at the time it vests custody of the child in the person or government agency;

(d) If at the time the court removed the child from home or vested legal or permanent custody of the child in the person or government agency, whichever occurred first, one parent was in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, was not known to reside in this state, tuition shall be paid by the district determined under [division \(D\) of section 3313.65 of the Revised Code](#) as the district required to pay any tuition while the parent was in such facility or placement;

(e) If the department of education has determined, pursuant to [division \(A\)\(2\) of section 2151.362 of the Revised Code](#), that a school district other than the one named in the court's initial order, or in a prior determination of the department, is responsible to bear the cost of educating the child, the district so determined shall be responsible for that cost.

(3) If the child is not in the permanent or legal custody of a government agency or person other than the child's parent and the child resides in a home, tuition shall be paid by one of the following:

(a) The school district in which the child's parent resides;

(b) If the child's parent is not a resident of this state, the home in which the child resides.

(D) Tuition required to be paid under divisions (C)(2) and (3)(a) of this section shall be computed in accordance with [section 3317.08 of the Revised Code](#). Tuition required to be paid under division (C)(3)(b) of this section

shall be computed in accordance with [section 3317.081 of the Revised Code](#). If a home fails to pay the tuition required by division (C)(3)(b) of this section, the board of education providing the education may recover in a civil action the tuition and the expenses incurred in prosecuting the action, including court costs and reasonable attorney's fees. If the prosecuting attorney or city director of law represents the board in such action, costs and reasonable attorney's fees awarded by the court, based upon the prosecuting attorney's, director's, or one of their designee's time spent preparing and presenting the case, shall be deposited in the county or city general fund.

(E) A board of education may enroll a child free of any tuition obligation for a period not to exceed sixty days, on the sworn statement of an adult resident of the district that the resident has initiated legal proceedings for custody of the child.

(F) In the case of any individual entitled to attend school under this division, no tuition shall be charged by the school district of attendance and no other school district shall be required to pay tuition for the individual's attendance. Notwithstanding division (B), (C), or (E) of this section:

(1) All persons at least eighteen but under twenty-two years of age who live apart from their parents, support themselves by their own labor, and have not successfully completed the high school curriculum or the individualized education program developed for the person by the high school pursuant to [section 3323.08 of the Revised Code](#), are entitled to attend school in the district in which they reside.

(2) Any child under eighteen years of age who is married is entitled to attend school in the child's district of residence.

(3) A child is entitled to attend school in the district in which either of the child's parents is employed if the child has a medical condition that may require emergency medical attention. The parent of a child entitled to attend school under division (F)(3) of this section shall submit to the board of education of the district in which the parent is employed a statement from the child's physician certifying that the child's medical condition may require emergency medical attention. The statement shall be supported by such other evidence as the board may require.

(4) Any child residing with a person other than the child's parent is entitled, for a period not to exceed twelve months, to attend school in the district in which that person resides if the child's parent files an affidavit with the superintendent of the district in which the person with whom the child is living resides stating all of the following:

(a) That the parent is serving outside of the state in the armed services of the United States;

(b) That the parent intends to reside in the district upon returning to this state;

(c) The name and address of the person with whom the child is living while the parent is outside the state.

(5) Any child under the age of twenty-two years who, after the death of a parent, resides in a school district other than the district in which the child attended school at the time of the parent's death is entitled to continue to attend school in the district in which the child attended school at the time of the parent's death for the remainder of the school year, subject to approval of that district board.

(6) A child under the age of twenty-two years who resides with a parent who is having a new house built in a school district outside the district where the parent is residing is entitled to attend school for a period of time in the district where the new house is being built. In order to be entitled to such attendance, the parent shall provide the district superintendent with the following:

(a) A sworn statement explaining the situation, revealing the location of the house being built, and stating the parent's intention to reside there upon its completion;

(b) A statement from the builder confirming that a new house is being built for the parent and that the house is at the location indicated in the parent's statement.

(7) A child under the age of twenty-two years residing with a parent who has a contract to purchase a house in a school district outside the district where the parent is residing and who is waiting upon the date of closing of the mortgage loan for the purchase of such house is entitled to attend school for a period of time in the district where the house is being purchased. In order to be entitled to such attendance, the parent shall provide the district superintendent with the following:

(a) A sworn statement explaining the situation, revealing the location of the house being purchased, and stating the parent's intent to reside there;

(b) A statement from a real estate broker or bank officer confirming that the parent has a contract to purchase the house, that the parent is waiting upon the date of closing of the mortgage loan, and that the house is at the location indicated in the parent's statement.

The district superintendent shall establish a period of time not to exceed ninety days during which the child entitled to attend school under division (F)(6) or (7) of this section may attend without tuition obligation. A student attending a school under division (F)(6) or (7) of this section shall be eligible to participate in interscholastic athletics under the auspices of that school, provided the board of education of the school district where the student's parent resides, by a formal action, releases the student to participate in interscholastic athletics at the school where the student is attending, and provided the student receives any authorization required by a public agency or private organization of which the school district is a member exercising authority over interscholastic sports.

(8) A child whose parent is a full-time employee of a city, local, or exempted village school district, or of an educational service center, may be admitted to the schools of the district where the child's parent is employed, or in the case of a child whose parent is employed by an educational service center, in the district that serves the location where the parent's job is primarily located, provided the district board of education establishes such an admission policy by resolution adopted by a majority of its members. Any such policy shall take effect on the first day of the school year and the effective date of any amendment or repeal may not be prior to the first day of the subsequent school year. The policy shall be uniformly applied to all such children and shall provide for the admission of any such child upon request of the parent. No child may be admitted under this policy after the first day of classes of any school year.

(9) A child who is with the child's parent under the care of a shelter for victims of domestic violence, as defined in [section 3113.33 of the Revised Code](#), is entitled to attend school free in the district in which the child is with the child's parent, and no other school district shall be required to pay tuition for the child's attendance in that school district.

The enrollment of a child in a school district under this division shall not be denied due to a delay in the school district's receipt of any records required under [section 3313.672 of the Revised Code](#) or any other records required for enrollment. Any days of attendance and any credits earned by a child while enrolled in a school district under this division shall be transferred to and accepted by any school district in which the child subsequently enrolls. The state board of education shall adopt rules to ensure compliance with this division.

(10) Any child under the age of twenty-two years whose parent has moved out of the school district after the commencement of classes in the child's senior year of high school is entitled, subject to the approval of that district board, to attend school in the district in which the child attended school at the time of the parental move for the remainder of the school year and for one additional semester or equivalent term. A district board may also adopt a policy specifying extenuating circumstances under which a student may continue to attend school under division (F)(10) of this section for an additional period of time in order to successfully complete the high school curriculum for the individualized education program developed for the student by the high school pursuant to [section 3323.08 of the Revised Code](#).

(11) As used in this division, "grandparent" means a parent of a parent of a child. A child under the age of twenty-two years who is in the custody of the child's parent, resides with a grandparent, and does not require special education is entitled to attend the schools of the district in which the child's grandparent resides, provided that, prior to such attendance in any school year, the board of education of the school district in which the child's grandparent resides and the board of education of the school district in which the child's parent resides enter into a written agreement specifying that good cause exists for such attendance, describing the nature of this good cause, and consenting to such attendance.

In lieu of a consent form signed by a parent, a board of education may request the grandparent of a child attending school in the district in which the grandparent resides pursuant to division (F)(11) of this section to complete

any consent form required by the district, including any authorization required by [sections 3313.712, 3313.713, 3313.716, and 3313.718 of the Revised Code](#). Upon request, the grandparent shall complete any consent form required by the district. A school district shall not incur any liability solely because of its receipt of a consent form from a grandparent in lieu of a parent.

Division (F)(11) of this section does not create, and shall not be construed as creating, a new cause of action or substantive legal right against a school district, a member of a board of education, or an employee of a school district. This section does not affect, and shall not be construed as affecting, any immunities from defenses to tort liability created or recognized by Chapter 2744. of the Revised Code for a school district, member, or employee.

(12) A child under the age of twenty-two years is entitled to attend school in a school district other than the district in which the child is entitled to attend school under division (B), (C), or (E) of this section provided that, prior to such attendance in any school year, both of the following occur:

(a) The superintendent of the district in which the child is entitled to attend school under division (B), (C), or (E) of this section contacts the superintendent of another district for purposes of this division;

(b) The superintendents of both districts enter into a written agreement that consents to the attendance and specifies that the purpose of such attendance is to protect the student's physical or mental well-being or to deal with other extenuating circumstances deemed appropriate by the superintendents.

While an agreement is in effect under this division for a student who is not receiving special education under Chapter 3323. of the Revised Code and notwithstanding Chapter 3327. of the Revised Code, the board of education of neither school district involved in the agreement is required to provide transportation for the student to and from the school where the student attends.

A student attending a school of a district pursuant to this division shall be allowed to participate in all student activities, including interscholastic athletics, at the school where the student is attending on the same basis as any student who has always attended the schools of that district while of compulsory school age.

(13) All school districts shall comply with the “McKinney-Vento Homeless Assistance Act,” [42 U.S.C.A. 11431 et seq.](#), for the education of homeless children. Each city, local, and exempted village school district shall comply with the requirements of that act governing the provision of a free, appropriate public education, including public preschool, to each homeless child.

When a child loses permanent housing and becomes a homeless person, as defined in [42 U.S.C.A. 11481\(5\)](#), or when a child who is such a homeless person changes temporary living arrangements, the child's parent or guardian shall have the option of enrolling the child in either of the following:

(a) The child's school of origin, as defined in [42 U.S.C.A. 11432\(g\)\(3\)\(C\)](#);

(b) The school that is operated by the school district in which the shelter where the child currently resides is located and that serves the geographic area in which the shelter is located.

(14) A child under the age of twenty-two years who resides with a person other than the child's parent is entitled to attend school in the school district in which that person resides if both of the following apply:

(a) That person has been appointed, through a military power of attorney executed under section 574(a) of the "National Defense Authorization Act for Fiscal Year 1994," 107 Stat. 1674 (1993), [10 U.S.C. 1044b](#), or through a comparable document necessary to complete a family care plan, as the parent's agent for the care, custody, and control of the child while the parent is on active duty as a member of the national guard or a reserve unit of the armed forces of the United States or because the parent is a member of the armed forces of the United States and is on a duty assignment away from the parent's residence.

(b) The military power of attorney or comparable document includes at least the authority to enroll the child in school.

The entitlement to attend school in the district in which the parent's agent under the military power of attorney or comparable document resides applies until the end of the school year in which the military power of attorney or comparable document expires.

(G) A board of education, after approving admission, may waive tuition for students who will temporarily reside in the district and who are either of the following:

(1) Residents or domiciliaries of a foreign nation who request admission as foreign exchange students;

(2) Residents or domiciliaries of the United States but not of Ohio who request admission as participants in an exchange program operated by a student exchange organization.

(H) Pursuant to [sections 3311.211, 3313.90, 3319.01, 3323.04, 3327.04, and 3327.06 of the Revised Code](#), a child may attend school or participate in a special education program in a school district other than in the district where the child is entitled to attend school under division (B) of this section.

(I)(1) Notwithstanding anything to the contrary in this section or [section 3313.65 of the Revised Code](#), a child under twenty-two years of age may attend school in the school district in which the child, at the end of the first full week of October of the school year, was entitled to attend school as otherwise provided under this section or [section 3313.65 of the Revised Code](#), if at that time the child was enrolled in the schools of the district but since

that time the child or the child's parent has relocated to a new address located outside of that school district and within the same county as the child's or parent's address immediately prior to the relocation. The child may continue to attend school in the district, and at the school to which the child was assigned at the end of the first full week of October of the current school year, for the balance of the school year. Division (I)(1) of this section applies only if both of the following conditions are satisfied:

(a) The board of education of the school district in which the child was entitled to attend school at the end of the first full week in October and of the district to which the child or child's parent has relocated each has adopted a policy to enroll children described in division (I)(1) of this section.

(b) The child's parent provides written notification of the relocation outside of the school district to the superintendent of each of the two school districts.

(2) At the beginning of the school year following the school year in which the child or the child's parent relocated outside of the school district as described in division (I)(1) of this section, the child is not entitled to attend school in the school district under that division.

(3) Any person or entity owing tuition to the school district on behalf of the child at the end of the first full week in October, as provided in division (C) of this section, shall continue to owe such tuition to the district for the child's attendance under division (I)(1) of this section for the lesser of the balance of the school year or the balance of the time that the child attends school in the district under division (I)(1) of this section.

(4) A pupil who may attend school in the district under division (I)(1) of this section shall be entitled to transportation services pursuant to an agreement between the district and the district in which the child or child's parent has relocated unless the districts have not entered into such agreement, in which case the child shall be entitled to transportation services in the same manner as a pupil attending school in the district under interdistrict open enrollment as described in [division \(H\) of section 3313.981 of the Revised Code](#), regardless of whether the district has adopted an open enrollment policy as described in division (B)(1)(b) or (c) of [section 3313.98 of the Revised Code](#).

(J) This division does not apply to a child receiving special education.

A school district required to pay tuition pursuant to division (C)(2) or (3) of this section or [section 3313.65 of the Revised Code](#) shall have an amount deducted under [division \(F\) of section 3317.023 of the Revised Code](#) equal to its own tuition rate for the same period of attendance. A school district entitled to receive tuition pursuant to division (C)(2) or (3) of this section or [section 3313.65 of the Revised Code](#) shall have an amount credited under [division \(F\) of section 3317.023 of the Revised Code](#) equal to its own tuition rate for the same period of attendance. If the tuition rate credited to the district of attendance exceeds the rate deducted from the district required to pay tuition, the department of education shall pay the district of attendance the difference from

amounts deducted from all districts' payments under [division \(F\) of section 3317.023 of the Revised Code](#) but not credited to other school districts under such division and from appropriations made for such purpose. The treasurer of each school district shall, by the fifteenth day of January and July, furnish the superintendent of public instruction a report of the names of each child who attended the district's schools under divisions (C)(2) and (3) of this section or [section 3313.65 of the Revised Code](#) during the preceding six calendar months, the duration of the attendance of those children, the school district responsible for tuition on behalf of the child, and any other information that the superintendent requires.

Upon receipt of the report the superintendent, pursuant to [division \(F\) of section 3317.023 of the Revised Code](#), shall deduct each district's tuition obligations under divisions (C)(2) and (3) of this section or [section 3313.65 of the Revised Code](#) and pay to the district of attendance that amount plus any amount required to be paid by the state.

(K) In the event of a disagreement, the superintendent of public instruction shall determine the school district in which the parent resides.

(L) Nothing in this section requires or authorizes, or shall be construed to require or authorize, the admission to a public school in this state of a pupil who has been permanently excluded from public school attendance by the superintendent of public instruction pursuant to [sections 3301.121 and 3313.662 of the Revised Code](#).

(M) In accordance with division (B)(1) of this section, a child whose parent is a member of the national guard or a reserve unit of the armed forces of the United States and is called to active duty, or a child whose parent is a member of the armed forces of the United States and is ordered to a temporary duty assignment outside of the district, may continue to attend school in the district in which the child's parent lived before being called to active duty or ordered to a temporary duty assignment outside of the district, as long as the child's parent continues to be a resident of that district, and regardless of where the child lives as a result of the parent's active duty status or temporary duty assignment. However, the district is not responsible for providing transportation for the child if the child lives outside of the district as a result of the parent's active duty status or temporary duty assignment.

CREDIT(S)

(2008 H 214, eff. 5-14-08; 2007 H 119, eff. 9-29-07; 2006 S 164, eff. 3-23-07; 2006 H 137, eff. 10-9-06; 2006 S 238, eff. 9-21-06; 2006 H 530, eff. 6-30-06; 2004 H 426, eff. 5-18-05; 2004 H 130, eff. 7-20-04; 2003 H 3, eff. 8-15-03; 2001 H 94, eff. 9-5-01; 2000 H 332, eff. 1-1-01; 2000 H 448, eff. 10-5-00; 1999 H 470, eff. 7-1-00; 1999 H 121, eff. 11-3-99; 1999 H 281, eff. 10-29-99; 1999 H 238, eff. 6-8-99; 1998 H 650, eff. 7-1-98; 1997 H 408, eff. 10-1-97; 1996 H 601, eff. 10-29-96; 1993 H 152, eff. 7-1-93; 1992 H 154, H 55; 1991 H 298; 1990 S 3, H 723, H 434, H 341; 1989 H 248, S 51; 1988 H 743, H 146; 1987 H 231; 1986 H 564; 1983 H 210; 1981 S 140, H 71; 1980 H 965, S 160, H 900, H 550; 1978 H 811; 1973 H 159; 130 v S 77; 129 v S 337; 1953 H 1; GC 4838-2)

UNCODIFIED LAW

2008 H 214 §§ 7 and 8, eff. 5-14-08, read:

SECTION 7. Sections 5103.23 to 5103.237 and the amendments to [sections 2151.23, 2151.39](#), 3313.64, and [5103.16 of the Revised Code](#) shall continue in effect until the Interstate Compact for the Placement of Children contained in [sections 5103.20 to 5103.22 of the Revised Code](#) becomes effective as described in Article XIV of that Compact, at which time sections 5103.23 to 5103.237 and the amendments made by this act to [sections 2151.23, 2151.39](#), 3313.64, and [5103.16 of the Revised Code](#) regarding the Interstate Compact on the Placement of Children no longer apply.

SECTION 8. The enactment of the Interstate Compact on the Placement of Children in Section 9 [\[FN1\]](#) of this act is a continuation of the interstate compact of the same name that was repealed in Am. Sub. S.B. 238 of the 126th General Assembly but remains in effect according to Article IX of that Compact.

[\[FN1\]](#) So in original; should this read “Section 5”?

2007 H 119, § 269.50.50, § 269.50.80, and § 269.60.10, eff. 6-30-07, read:

Section 269.50.50. PRIVATE TREATMENT FACILITY PROJECT

(A) As used in this section:

(1) The following are “participating residential treatment centers”:

(a) Private residential treatment facilities that have entered into a contract with the Department of Youth Services to provide services to children placed at the facility by the Department and which, in fiscal year 2008 or fiscal year 2009 or both, the Department pays through appropriation item 470-401, Care and Custody;

(b) Abraxas, in Shelby;

(c) Paint Creek, in Bainbridge;

(d) Act One, in Akron;

(e) Friars Club, in Cincinnati.

(2) “Education program” means an elementary or secondary education program or a special education program and related services.

(3) “Served child” means any child receiving an education program pursuant to division (B) of this section.

(4) “School district responsible for tuition” means a city, exempted village, or local school district that, if tuition payment for a child by a school district is required under law that existed in fiscal year 1998, is the school district required to pay that tuition.

(5) “Residential child” means a child who resides in a participating residential treatment center and who is receiving an educational program under division (B) of this section.

(B) A youth who is a resident of the state and has been assigned by a juvenile court or other authorized agency to a residential treatment facility specified in division (A) of this section shall be enrolled in an approved educational program located in or near the facility. Approval of the educational program shall be contingent upon compliance with the criteria established for such programs by the Department of Education. The educational program shall be provided by a school district or educational service center, or by the residential facility itself. Maximum flexibility shall be given to the residential treatment facility to determine the provider. In the event that a voluntary agreement cannot be reached and the residential facility does not choose to provide the educational program, the educational service center in the county in which the facility is located shall provide the educational program at the treatment center to children under twenty-two years of age residing in the treatment center.

(C) Any school district responsible for tuition for a residential child shall, notwithstanding any conflicting provision of the Revised Code regarding tuition payment, pay tuition for the child for fiscal year 2008 and fiscal year 2009 to the education program provider and in the amount specified in this division. If there is no school district responsible for tuition for a residential child and if the participating residential treatment center to which the child is assigned is located in the city, exempted village, or local school district that, if the child were not a resident of that treatment center, would be the school district where the child is entitled to attend school under sections 3313.64 and [3313.65 of the Revised Code](#), that school district, notwithstanding any conflicting provision of the Revised Code, shall pay tuition for the child for fiscal year 2008 and fiscal year 2009 under this division unless that school district is providing the educational program to the child under division (B) of this section.

A tuition payment under this division shall be made to the school district, educational service center, or residential treatment facility providing the educational program to the child.

The amount of tuition paid shall be:

(1) The amount of tuition determined for the district under division (A) of [section 3317.08 of the Revised Code](#);

(2) In addition, for any student receiving special education pursuant to an individualized education program as defined in [section 3323.01 of the Revised Code](#), a payment for excess costs. This payment shall equal the actual cost to the school district, educational service center, or residential treatment facility of providing special education and related services to the student pursuant to the student's individualized education program, minus the tuition paid for the child under division (C)(1) of this section.

A school district paying tuition under this division shall not include the child for whom tuition is paid in the district's average daily membership certified under division (A) of [section 3317.03 of the Revised Code](#).

(D) In each of fiscal years 2008 and 2009, the Department of Education shall reimburse, from appropriations made for the purpose, a school district, educational service center, or residential treatment facility, whichever is providing the service, that has demonstrated that it is in compliance with the funding criteria for each served child for whom a school district must pay tuition under division (C) of this section. The amount of the reimbursement shall be the formula amount specified in [section 3317.022 of the Revised Code](#), except that the department shall proportionately reduce this reimbursement if sufficient funds are not available to pay this amount to all qualified providers.

(E) Funds provided to a school district, educational service center, or residential treatment facility under this section shall be used to supplement, not supplant, funds from other public sources for which the school district, service center, or residential treatment facility is entitled or eligible.

(F) The Department of Education shall track the utilization of funds provided to school districts, educational service centers, and residential treatment facilities under this section and monitor the effect of the funding on the educational programs they provide in participating residential treatment facilities. The department shall monitor the programs for educational accountability.

Section 269.50.80. (A) As used in this section:

(1) "IEP" has the same meaning as in [section 3323.01 of the Revised Code](#).

(2) "SBH student" means a student receiving special education and related services for severe behavior disabilities pursuant to an IEP.

(B) This section applies only to a community school established under Chapter 3314. of the Revised Code that in each of fiscal years 2008 and 2009 enrolls a number of SBH students equal to at least fifty per cent of the total number of students enrolled in the school in the applicable fiscal year.

(C) In addition to any payments made under [section 3314.08 of the Revised Code](#), in each of fiscal years 2008

and 2009, the Department of Education shall pay to a community school to which this section applies a subsidy equal to the difference between the aggregate amount calculated and paid in that fiscal year to the community school for special education and related services additional weighted costs for the SBH students enrolled in the school and the aggregate amount that would have been calculated for the school for special education and related services additional weighted costs for those same students in fiscal year 2001. If the difference is a negative number, the amount of the subsidy shall be zero.

(D) The amount of any subsidy paid to a community school under this section shall not be deducted from the school district in which any of the students enrolled in the community school are entitled to attend school under section 3313.64 or [3313.65 of the Revised Code](#). The amount of any subsidy paid to a community school under this section shall be paid from funds appropriated to the Department of Education in appropriation item 200-550, Foundation Funding.

Section 269.60.10. No community school established under Chapter 3314. of the Revised Code that was not open for operation as of May 1, 2005, shall operate from a home, as defined in section 3313.64 of the Revised Code.

2005 H 66, § 206.10.11, eff. 6-30-05, reads:

No community school established under Chapter 3314. of the Revised Code that was not open for operation as of May 1, 2005, shall operate from a home, as defined in section 3313.64 of the Revised Code.

2001 H 94, § 44.29, eff. 6-6-01, reads:

(A) As used in this section:

(1) The following are “participating residential treatment centers”:

(a) Private residential treatment facilities that have entered into a contract with the Department of Youth Services to provide services to children placed at the facility by the department and which, in fiscal year 2002 or 2003 or both, the department pays through appropriation item 470-401, Care and Custody;

(b) Abraxas, in Shelby;

(c) Paint Creek, in Bainbridge;

(d) Act One, in Akron;

(e) Friars Club, in Cincinnati.

(2) "Education program" means an elementary or secondary education program or a special education program and related services.

(3) "Served child" means any child receiving an education program pursuant to division (B) of this section.

(4) "School district responsible for tuition" means a city, exempted village, or local school district that, if tuition payment for a child by a school district is required under law that existed in fiscal year 1998, is the school district required to pay that tuition.

(5) "Residential child" means a child who resides in a participating residential treatment center and who is receiving an educational program under division (B) of this section.

(B) A youth who is a resident of the state and has been assigned by a juvenile court or other authorized agency to a residential treatment facility specified in division (A) of this section shall be enrolled in an approved educational program located in or near the facility. Approval of the educational program shall be contingent upon compliance with the criteria established for such programs by the Department of Education. The educational program shall be provided by a school district or educational service center, or by the residential facility itself. Maximum flexibility shall be given to the residential treatment facility to determine the provider. In the event that a voluntary agreement cannot be reached and the residential facility does not choose to provide the educational program, the educational service center in the county in which the facility is located shall provide the educational program at the treatment center to children under twenty-two years of age residing in the treatment center.

(C) Any school district responsible for tuition for a residential child shall, notwithstanding any conflicting provision of the Revised Code regarding tuition payment, pay tuition for the child for fiscal years 2002 and 2003 to the education program provider and in the amount specified in this division. If there is no school district responsible for tuition for a residential child and if the participating residential treatment center to which the child is assigned is located in the city, exempted village, or local school district that, if the child were not a resident of that treatment center, would be the school district where the child is entitled to attend school under sections 3313.64 and 3313.65 of the Revised Code, that school district shall, notwithstanding any conflicting provision of the Revised Code, pay tuition for the child for fiscal years 2002 and 2003 under this division unless that school district is providing the educational program to the child under division (B) of this section.

A tuition payment under this division shall be made to the school district, educational service center, or residential treatment facility providing the educational program to the child.

The amount of tuition paid shall be:

(1) The amount of tuition determined for the district under division (A) of [section 3317.08 of the Revised Code](#);

(2) In addition, for any student receiving special education pursuant to an individualized education program as defined in [section 3323.01 of the Revised Code](#), a payment for excess costs. This payment shall equal the actual cost to the school district, educational service center, or residential treatment facility of providing special education and related services to the student pursuant to the student's individualized education program, minus the tuition paid for the child under division (C)(1) of this section.

A school district paying tuition under this division shall not include the child for whom tuition is paid in the district's average daily membership certified under division (A) of [section 3317.03 of the Revised Code](#).

(D) In each of fiscal years 2002 and 2003, the Department of Education shall reimburse, from appropriations made for the purpose, a school district, educational service center, or residential treatment facility, whichever is providing the service, that has demonstrated that it is in compliance with the funding criteria for each served child for whom a school district must pay tuition under division (C) of this section. The amount of the reimbursement in either fiscal year shall be the formula amount specified in [section 3317.022 of the Revised Code](#), except that the department shall proportionately reduce this reimbursement if sufficient funds are not available to pay this amount to all qualified providers.

(E) Funds provided to a school district, educational service center, or residential treatment facility under this section shall be used to supplement, not supplant, funds from other public sources for which the school district, service center, or residential treatment facility is entitled or eligible.

(F) The Department of Education shall track the utilization of funds provided to school districts, educational service centers, and residential treatment facilities under this section and monitor the effect of the funding on the educational programs they provide in participating residential treatment facilities. The department shall monitor the programs for educational accountability.

1999 H 121, § 3: See Uncodified Law under Ch 3314.

1999 H 282, § 32: See Uncodified Law under Ch 3314.

1997 H 215, § 50.32, eff. 6-30-97, reads:

(A) As used in this section:

(1) The following are “participating residential treatment centers”:

(a) Private residential treatment facilities which have entered into a contract with the Ohio Department of Youth Services to provide services to children placed at the facility by the Department and which, in fiscal year 1998 or 1999 or both, the department pays through appropriation item 470-401, Care and Custody.

(b) Abraxas, in Shelby;

(c) Paint Creek, in Bainbridge;

(d) Act One, in Akron;

(e) Friars Club, in Cincinnati.

(2) "Education program" means an elementary or secondary education program or a special education program and related services.

(3) "Served child" means any child receiving an education program pursuant to division (B) of this section.

(4) "School district responsible for tuition" means a city, exempted village, or local school district that, if tuition payment for a child by a school district is required under law, is the school district required to pay that tuition.

(5) "Residential child" means a child who resides in a participating residential treatment center and who is receiving an educational program under division (B) of this section.

(B) A youth who is a resident of the State of Ohio and has been assigned by a juvenile court or other authorized agency to a residential treatment facility specified in division (A) of this section shall be enrolled in an approved educational program located in or near the facility. Approval of the educational program shall be contingent upon compliance with the criteria established for such programs by the Department of Education for fiscal years 1998 and 1999. The educational program shall be provided by a school district or educational service center, or by the residential facility itself. Maximum flexibility shall be given to the residential treatment facility to determine the provider. In the event that a voluntary agreement cannot be reached and the residential facility does not choose to provide the educational program, the educational service center in the county in which the facility is located shall provide the educational program at the treatment center to children under the age of twenty-two years residing in the treatment center.

The Ohio Family and Children First Cabinet Council shall recommend educational criteria to the Department of Education within thirty days of the enactment of this section. Prior to September 1, 1998, the Department of Education shall develop educational criteria, which take into consideration the recommendations of the Family and Children First Cabinet Council.

(C) Any school district responsible for tuition for a residential child shall, notwithstanding any conflicting provision of the Revised Code regarding tuition payment, pay tuition for the child for fiscal years 1998 and 1999 to the education program provider and in the amount specified in this division. If there is no school district responsible for tuition for a residential child and if the participating residential treatment center to which the child is assigned is located in the city, exempted village, or local school district that, if the child were not a resident of that treatment center, would be the school district where the child is entitled to attend school under sections 3313.64 and [3313.65 of the Revised Code](#), that school district shall, notwithstanding any conflicting provision of the Revised Code, pay tuition for the child for fiscal years 1998 and 1999 under this division unless that school district is providing the educational program to the child under division (B) of this section.

A tuition payment under this division shall be made to the school district, educational service center, or residential treatment facility providing the educational program to the child.

The amount of tuition paid shall be:

(1) The amount of tuition determined for the district under division (A) of [section 3317.08 of the Revised Code](#);

(2) In addition, for any student receiving special education pursuant to an individualized education program as defined in [section 3323.01 of the Revised Code](#), a payment for excess costs. This payment shall equal the actual cost to the school district, educational service center, or residential treatment facility of providing special education and related services to the student pursuant to the student's individualized education program, minus the tuition paid for the child under division (C)(1) of this section.

A school district paying tuition under this division shall not include the child for whom tuition is paid in the district's average daily membership certified under division (A) of [section 3317.03 of the Revised Code](#).

(D) In each of fiscal years 1998 and 1999, the Department of Education shall reimburse, from appropriations made for the purpose, a school district, educational service center, or residential treatment facility, whichever is providing the service, which has demonstrated that it is in compliance with the funding criteria for each served child for whom a school district must pay tuition under division (C) of this section. The amount of this reimbursement in either fiscal year shall be the formula amount specified in [section 3317.022 of the Revised Code](#).

(E) Funds provided to a school district, educational service center, or residential treatment facility under this section shall be used to supplement, not supplant, funds from other public sources for which the school district, service center, or residential treatment facility is entitled or eligible.

(F) The Department of Education shall track the utilization of funds provided to school districts, educational service centers, and residential treatment facilities under this section and monitor the effect of the funding on the educational programs they provide in participating residential treatment facilities. The department shall monitor

the programs for educational accountability.

HISTORICAL AND STATUTORY NOTES

Ed. Note: The legal review and technical services staff of the Legislative Service Commission has issued an opinion regarding the treatment of multiple amendments. The opinion is neither legally authoritative nor binding, but is provided as a general indication that the amendments of the several acts [2008 H 214, eff. 5-14-08 and 2007 H 119, eff. 9-29-07] may be harmonized pursuant to the rule of construction contained in [R.C. 1.52\(B\)](#) requiring all amendments be given effect if they can reasonably be put into simultaneous operation. See *Baldwin's Ohio Legislative Service Annotated*, 2008, page 1/L-35, and 2007, page 4/L-780, or the OH-LEGIS or OH-LEGIS-OLD database on Westlaw, for original versions of these Acts.

Ed. Note: 3313.64 contains provisions analogous to former 3321.23, repealed by 1978 H 811, eff. 8-21-78.

Pre-1953 H 1 Amendments: 120 v 475

Amendment Note: 2006 H 137 substituted “2151.362” for “2151.357” in divisions (C)(2)(c) and (C)(2)(e).

Amendment Note: 2006 S 238 substituted “5103.22” for “5103.28” in division (A)(5)(c).

CROSS REFERENCES

Adjustments to basic state aid, [3317.023](#)
Administration of statewide proficiency tests, [3301.0711](#)
Amount of scholarship, reduction in payments to school districts, [3310.08](#)
Average daily membership, certification of, [3317.03](#)
Award of scholarships, tuition assistance grants, see [3313.978](#)
Collection of tuition, failure to collect, [3327.06](#)
Community schools, admission procedures, [3314.06](#)
Community schools, distribution of assets upon cessation of operation, [3314.074](#)
Community schools, effect of expiration or nonrenewal of contract, [3314.07](#)
Community schools, entitled to attend school defined, [3314.091](#)
Community schools, payments for all-day kindergarten, [3314.13](#)
Community schools, resident school district defined, [3314.087](#)
Compulsory attendance, [3321.04](#)
Compulsory school age, [3321.01](#)
Compulsory school attendance, exceptions, [3321.03](#)
Computation of tuition in certain circumstances, [3317.081](#)
Education of handicapped children, programs by county boards of mental retardation and developmental disabilities, [3323.09](#)

Education of handicapped children, residents of certain facilities, not school residents of state, tuition, [3323.141](#)
 Excess cost payments, [3323.14](#)
 Expediting certain cases or issues raised by person on active duty or immediate family member, [1349.04](#)
 Foundation program, increase or decrease in basic state aid, [3317.023](#)
 Juvenile court, removal of child, cost of education, [2151.357](#)
 Order of commitment to department of youth services; release; records; parental rights, [5139.05](#)
 Place and duration of institutionalization; records; notice to schools and victims, [2152.18](#)
 Post-secondary enrollment options program, parent and school district defined, [3365.01](#)
 Rehabilitation of child, [5139.07](#)
 School district placing child with county board of mental retardation and developmental disabilities, responsibility for excess tuition costs, [3323.142](#)
 School for the blind, notice of granting of diplomas, [3325.08](#)
 School foundation program, adjustments to basic state aid, shared education contracts, [3317.023](#)
 School foundation program, certification of average daily membership, shared education contracts, [3317.03](#)
 Schools, certification of average daily membership, [3317.03](#)
 STEM schools, admissions procedures, [3326.10](#)
 STEM schools, native student defined, [3326.20](#)
 STEM schools, resident district defined, [3326.31](#)
 Tuition adjustments based on amount of basic aid, [3317.082](#)
 Tuition for nonresident pupils, [3317.08](#)

OHIO ADMINISTRATIVE CODE REFERENCES

School enrollment for victims of domestic violence, [OAC 3301-10-01](#)

UNITED STATES CODE ANNOTATED

Combating impact of experiencing or witnessing domestic violence, elementary and secondary school programs, [20 USCA 7275](#)

Education of migratory children, [20 USCA 6391 et seq.](#)

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[Schools](#)  [153](#), [159](#).
 Westlaw Topic No. [345](#).
[C.J.S. Schools and School Districts](#) §§ [712](#), [718](#), [726](#) to [733](#).

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Encyclopedias

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[OH Jur. 3d Guardian & Ward § 86.1](#), Relinquishment to Grandparent Through Power of Attorney.

[OH Jur. 3d Guardian & Ward § 86.2](#), Caretaker Authorization Affidavit.

[OH Jur. 3d Schools, Universities, & Colleges § 275](#), Right to Free Education in Proper District.

[OH Jur. 3d Schools, Universities, & Colleges § 277](#), Assignment to Public Schools.

[OH Jur. 3d Schools, Universities, & Colleges § 304](#), Nonresident Students.

[OH Jur. 3d Schools, Universities, & Colleges § 305](#), Nonresident Students--Residents of Children's Homes.

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Treatises and Practice Aids

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[Giannelli & Yeomans Salvador, Ohio Juvenile Law § 22:3](#), Department of Youth Services Commitment.

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[Hastings, Manoloff, Sheeran, & Stype, Ohio School Law § 26:10](#), Curriculum for Kindergarten Through Grade Eight--Kindergarten.

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[Hastings, Manoloff, Sheeran, & Stype, Ohio School Law § 26:19](#), Special Instruction, Adult Education--In General.

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1. Constitutional issues

A statute that permits a school board to deny, to a minor living apart from his parents or guardian, tuition-free admission to its public schools, if the minor's presence in the school district is to take advantage of free public schools, is a constitutional residency requirement. (Ed. note: Texas law construed in light of federal constitution.) [Martinez v. Bynum \(U.S.Tex. 1983\) 103 S.Ct. 1838, 461 U.S. 321, 75 L.Ed.2d 879.](#)

Due process requires that a student suspended for ten days or less be given oral or written notice of disciplinary charges. [Goss v. Lopez \(U.S.Ohio 1975\) 95 S.Ct. 729, 419 U.S. 565, 42 L.Ed.2d 725.](#)

Students who face temporary suspensions have property interests which fall within the purview of the Due Process Clause of the Fourteenth Amendment. [Goss v. Lopez \(U.S.Ohio 1975\) 95 S.Ct. 729, 419 U.S. 565, 42 L.Ed.2d 725.](#)

Student is entitled to due process in connection with a suspension of up to ten days to the extent of being entitled to oral or written notice of the charges against him and if he denies the charges an explanation of the evidence the authorities have and an opportunity to present his version; such notice should precede student's removal from school except where his presence endangers persons or property or threatens disruption of the academic process.

[Goss v. Lopez \(U.S. Ohio 1975\) 95 S.Ct. 729, 419 U.S. 565, 42 L.Ed.2d 725.](#)

Schools may have pupils primarily of one race that result from circumstances beyond the authority of school boards, and such de facto segregation is not necessarily a violation of the Fourteenth Amendment. [Penick v. Columbus Bd. of Ed. \(C.A.6 \(Ohio\) 1978\) 583 F.2d 787](#), stay granted 99 S.Ct. 24, 439 U.S. 1348, 58 L.Ed.2d 55, stay vacated 99 S.Ct. 3107, 443 U.S. 916, 61 L.Ed.2d 879, certiorari granted 99 S.Ct. 831, 439 U.S. 1066, 59 L.Ed.2d 31, affirmed 99 S.Ct. 2941, 443 U.S. 449, 61 L.Ed.2d 666, rehearing denied 100 S.Ct. 186, 444 U.S. 887, 62 L.Ed.2d 121, on remand 519 F.Supp. 925. Schools ↪ 13(5)

By statute enacted in 1887, the state of Ohio abolished the dual system of education. The District Court, however, found the Dayton City School District to be in noncompliance with this statutory mandate and with the Equal Protection Clause of the Fourteenth Amendment. [Brinkman v. Gilligan \(C.A.6 \(Ohio\) 1974\) 503 F.2d 684.](#)

No denial of rights protected by the Privileges and Immunities Clause of US Const Art IV §2 exists in a [42 USC 1983](#) action brought on behalf of athletes barred from participating in Ohio interscholastic athletics because their parents reside outside of Ohio, pursuant to OSHAA Bylaw 4, § 6.4-6-10. [Alerding v. Ohio High School Athletic Ass'n \(S.D. Ohio 1984\) 591 F.Supp. 1538](#), affirmed 779 F.2d 315.

The law of Ohio requires the state board of education to act to assure that school children enjoy full range of constitutional rights, and failure of state officials to act with full knowledge of the results of such failure provides a basis for an inference that they intended to accept local district acts and shared their intent to segregate. [Penick v. Columbus Bd. of Ed. \(S.D. Ohio 1977\) 429 F.Supp. 229](#), affirmed in part, remanded in part 583 F.2d 787, stay granted 99 S.Ct. 24, 439 U.S. 1348, 58 L.Ed.2d 55, stay vacated 99 S.Ct. 3107, 443 U.S. 916, 61 L.Ed.2d 879, certiorari granted 99 S.Ct. 831, 439 U.S. 1066, 59 L.Ed.2d 31, affirmed 99 S.Ct. 2941, 443 U.S. 449, 61 L.Ed.2d 666, rehearing denied 100 S.Ct. 186, 444 U.S. 887, 62 L.Ed.2d 121, on remand 519 F.Supp. 925. Schools ↪ 47

2. Definitions

For purposes of RC 3313.64, “legal or permanent custody” may be established by a court order, or by evidence of the transfer of temporary custody without a court order in accordance with [RC 5103.15](#). The temporary placement of a child with persons related by blood or marriage in accordance with [RC 5103.16\(A\)](#) does not affect the legal custody of the child for purposes of RC 3313.64(B)(2)(a). A notarized statement that is prepared by the court-designated custodial parent and purports to grant temporary custody of a child to a relative is not an “agreement for temporary custody,” as that term is defined in [RC 2151.011\(B\)\(17\)](#), and does not operate to transfer legal custody for purposes of RC 3313.64(B)(2)(a). OAG 95-032.

When a school is located in a private institution but is funded publicly and administered by the public school district in which the institution is located, it is a “public school” for purposes of RC 3313.64. OAG 80-095.

A child is a “ward” for the purposes of RC 3313.64 only if the facts warrant the conclusion that an “actual resident” of a school district stands in loco parentis to the child. 1963 OAG 545.

The determination of who stands in loco parentis to children attending the public school and to whom such children bear the relation of ward for school attendance purposes is in all cases a question of fact to be determined in the light of the circumstances connected with the situation. 1927 OAG 1291.

3. Tuition--free education

Statute governing school admission and tuition liability does not define “residency,” as applicable to requirement that child be admitted tuition-free in school district in which child's parent resides, and no minimum period of residency is required to trigger right to free education. [In re White \(Ohio App. 4 Dist., 06-16-1998\) 128 Ohio App.3d 387, 715 N.E.2d 203](#). [Schools ↪ 153](#); [Schools ↪ 159](#)

The statutory basis for disqualification from the system for free public education and for eligibility for admission into the training program for the mentally retarded that a child is incapable of profiting substantially from further instruction meets a rational basis test. [Cuyahoga County Ass'n for Retarded Children and Adults v. Essex \(N.D. Ohio 1976\) 411 F.Supp. 46](#).

In the absence of a statute that authorizes a board of education to charge tuition to a resident parent of a child who is entitled to attend the schools of the district without tuition under R.C. 3313.64(B)(1) for the child's attendance at a cooperative educational program, whether such program is an “educational option” or a “joint education program,” offered by the school district in conjunction with other school districts, R.C. 3313.64(C) prohibits a board of education from imposing such a charge. OAG 07-028.

Pursuant to [RC 4117.10\(A\)](#), a board of education may provide in a collective bargaining agreement that children of nonresident teaching employees may attend school within the district tuition-free. OAG 87-041.

A board of education may not provide tuition-free education for children of teaching employees who are not residents of the employing school district; RC 3313.64 and [3317.08](#) constrict the general authority of a board of education to provide this particular fringe benefit to its teaching employees. (But see OAG 87-041.) OAG 81-052.

A board of education may not charge tuition against pupils between six and twenty-one years of age for attendance at special schools, or for materials used or consumed in the schools, or for gasoline used in driver training, but it may charge for the materials used in any special course for articles which a pupil produces for his own use and ownership, or for the costs of driver training for persons over twenty-one years of age. 1958 OAG 3060.

4. ---- Nonresident students, tuition

It is not inequitable to require a school district to pay the tuition of a child who does not attend its district and whose parents do not reside within its boundaries. [Matter of Fetters \(Ohio App. 12 Dist., Preble, 03-09-1998\) No. CA97-08-022, 1998 WL 102997](#), Unreported.

Mother's new husband, who was neither the natural parent of mother's children from a previous marriage nor the adoptive parent of the children, was not a "parent," as would make new husband statutorily liable for tuition reimbursement to local school district in which children attended school, which was not the district in which mother and new husband resided. [Forest Hills Local School Dist. Bd. of Edn. v. Noe \(Ohio Com.Pl., 01-03-2007\) 144 Ohio Misc.2d 1, 877 N.E.2d 756, 2007-Ohio-6082. Schools ↪ 159](#)

When a child who does not receive special education is admitted to school pursuant to RC 3313.64(B)(2)(a) because the child is in the legal custody of a person other than the child's natural or adoptive parent, when the child's parents reside outside Ohio, and when RC 3313.64(C)(2)(d) does not apply, then tuition is paid by the school district determined pursuant to RC 3313.64(C)(2)(a) to (c)--that is, by the district in which the child's parent resided when the court removed the child from his home or vested legal custody in the person, whichever occurred first; if that residence is unknown, by the district in which the child resided when he was removed from his home or placed in legal custody, whichever occurred first; or by the district determined by the court as required by [RC 2151.357](#). If no district is determined pursuant to these provisions, then the district that has admitted the child must bear the cost of educating the child. The district may seek reimbursement from an out-of-state source pursuant to any contracts or other legal arrangements that may exist. OAG 94-033.

Pursuant to [RC 3323.142](#), when a school district places a child with a county board of mental retardation and developmental disabilities for special education, but another district is responsible for tuition under RC 3313.64 or [3313.65](#) and the child is not a resident of the territory served by the board, the board may charge the school district that is responsible for tuition with educational costs in excess of the per pupil amount received by the board under RC Ch 3317. Charges may also be made pursuant to contracts entered into under [RC 3323.142](#). No charge for excess costs may be made under [RC 3323.142](#) in circumstances that do not come within its provisions. OAG 91-025.

A school district is responsible for making payments in accordance with RC 3313.64, [3323.13](#), and [3323.14](#) to another school district for the provision of special education by that other school district. OAG 91-024.

Whenever a child is, pursuant to RC 3313.64(B)(2), admitted to the schools of a district other than the district in which his parent resides, tuition for such child must be paid as required by RC 3313.64(C), even though the child may be the subject of an order of guardianship issued prior to June 30, 1981. OAG 83-041.

If a child's parents are known to reside out of state, and permanent legal custody of the child has not been granted to another person or a governmental agency, RC 3313.64 requires that a private home or institution in which the child has been placed pay tuition to the school district where the child attends the public schools. OAG 80-095.

The state is responsible for any deficiency if the tuition paid by Cuyahoga county to the “host” county where the mentally retarded person's “school residence” remains in Cuyahoga county, and the state is required to subsidize the “host” county for each mentally retarded person enrolled in its training program. OAG 75-019.

A board of education which does not have a kindergarten program as part of its curriculum is neither obligated nor permitted to assume the cost of tuition for a child under six years of age who resides within its district and attends a kindergarten program in another school district. OAG 72-099.

A local board of education is entitled to receive tuition from other local boards of education in those instances specifically provided for by statute. OAG 69-040.

The school districts of Ohio are not empowered to make tuition payments pursuant to RC 3313.64 to schools or school districts outside the state. OAG 65-16.

When a parent of a nonresident school pupil is required to pay tuition pursuant to [RC 3327.06](#), and where such parent owns real property and pays taxes thereon in the school district in which he is obligated to pay such tuition, the obligation to pay such tuition may not be reduced by reason of such taxes and may not be considered as a setoff against the amount of taxes payable in such school district. 1962 OAG 3331.

Where the parents of a child place the child in a home outside the district of the residence of the parents, temporarily, and for the express purpose of that child attending school in the district where it has been placed, the parents are liable to the school district in question, for tuition for the child's attendance in school. 1933 OAG 2045.

Where the parents of the child place that child in a boarding house which is conducted as a business enterprise for profit and which lies outside the school district in which the parents reside, the child is not entitled to attend the schools of the district in which the boarding house is located without payment of tuition. 1933 OAG 2045.

Amount of tuition properly chargeable against nonresident pupils who attend trade or vocational schools, should be based upon the proportionate cost of the service rendered, to the district maintaining the school. 1930 OAG p 502.

There is no authority for the payment from public funds of the tuition of pupils in trade or vocational schools of a district other than that of the pupil's residence, unless the pupil attends such school upon assignment of the superintendent of the schools of the district of his residence. 1930 OAG p 502.

Board of education which maintains trade or vocational schools or departments, a part or all of the expense of which is met from district funds, is without authority to admit nonresident pupils to such schools, free of charge. 1930 OAG p 502.

A board of education is without authority to extend the privileges of the schools of its district free of charge to nonresident pupils. 1929 OAG 884.

A school pupil, who attends school in districts other than the one in which he has a school residence, is required to pay his own tuition and provide his own transportation, unless circumstances are such that a liability is imposed by law on the board of education for the school district of the pupil's residence to pay his tuition in or furnish his transportation to a school outside the district. 1928 OAG 1714.

School districts, wherein reside persons who stand in loco parentis to youths of school age, are liable for the tuition of such youths when they attend school in districts other than the one wherein such persons reside, providing the districts in which the persons who so stand in loco parentis are actual residents, do not afford proper school privileges for such youths. 1927 OAG 1291.

A determination of the question of whether or not a child has been in good faith committed by its parents to the care and custody of another for the purpose of having a home provided for it, or whether such living with another is merely for the purpose of evading the law requiring the payment of tuition for school attendance, is in all cases a question of fact to be determined from a consideration of all the facts and circumstances surrounding the case. 1927 OAG 106.

5. ---- Institutionalized children, tuition

When a child is placed in the permanent custody of the youth services department, the court shall determine the school district responsible for the costs of educating the child as provided by [RC 2151.357](#); [Juv R 34\(C\)](#) is not inconsistent with [RC 2151.357](#), and gives the court no discretion to determine such school district in any other manner. [Christman v. Washington Court House \(Fayette 1986\) 30 Ohio App.3d 228, 507 N.E.2d 384, 30 O.B.R. 386.](#)

The school board of the district in which a child has a school residence at the time of his placement in another district must pay his tuition, whether such placement was by order of court or by the child welfare board in whose care the parent had voluntarily left him, and subsequent proceedings by the juvenile court declaring such child neglected will not end the obligation of the district of his school residence to continue paying his tuition. [In re Laricchiuta \(Preble 1968\) 16 Ohio App.2d 164, 243 N.E.2d 111, 45 O.O.2d 456.](#)

A school district in which residents of a children's home attend school is entitled to tuition reimbursement from the district where the children legally resided prior to being placed in the children's home. [State ex rel. King v. Eveland \(Ohio 1927\) 117 Ohio St. 59, 158 N.E. 169, 5 Ohio Law Abs. 402, 25 Ohio Law Rep. 380.](#)

[RC 2151.357](#) and [3313.64\(C\)\(2\)](#) are applicable in determining which school district bears the cost of educating a child who moves during juvenile court proceedings; pursuant to [RC 3313.64\(C\)\(2\)\(a\)](#), the school district in which the child's family resided at the time the child was removed from his home and the time the court vested

permanent custody in the youth services must pay the cost of educating the child. *Christman v Washington Court House*, No. CA-85-04-006 (12th Dist Ct App, Fayette, 1-31-86).

When a juvenile court commits a neglected child to the temporary custody of a children services board, [RC 2151.357](#) requires the court to determine, in the manner prescribed by [RC 3313.64\(C\)\(2\)](#), the school district that is to bear the cost of educating the child. Where the children services board, retaining legal custody of the child, places the child to live with a relative in another state party to the interstate compact on the placement of children, [RC 5103.20](#), Art V(A) imposes upon the children services board, as the sending agency, the financial responsibility for assuring payment to the receiving state of the cost of the child's out-of-state public school tuition. In the absence of statutory direction as to the manner in which payment for the receiving state's tuition will be made by the responsible school district, as determined in the manner prescribed by [RC 3313.64\(C\)\(2\)](#), the juvenile court may, in the exercise of its discretion, direct the manner in which payment will be made. OAG 89-092.

The youth services department is eligible to receive educational tuition pursuant to [RC 3313.64\(I\)](#) and [3313.64\(C\)\(2\)](#) for a child committed to an institution operated thereby. OAG 88-023.

If a child receiving regular education is in the legal or permanent custody of a government agency or a person other than the child's natural or adoptive parent, and the mother retains residual parental rights, privileges and responsibilities, or was divested of such rights, and the mother resided as an inmate of the Ohio reformatory for women at the time the child was removed from his home, or at the time the court vested custody in such agency or person, whichever event occurred first, then the Marysville exempted village school district may be required to pay the child's tuition to the school district in which he is being educated. OAG 82-106.

If a child receiving regular education is not in the permanent or legal custody of a government agency or a person other than his natural or adoptive parent and he resides in a home, within the meaning of [RC 3313.64\(A\)\(4\)](#), and the child's mother qualifies as a parent by virtue of [RC 3313.64\(A\)\(1\)](#) and resides as an inmate at the Ohio reformatory for women, the Marysville exempted village school district may be required to pay the cost of the child's tuition to the district in which he is being educated. OAG 82-106.

Where an adult mentally retarded person is placed by the department of mental health and mental retardation in a nursing home in another county, the financial responsibility for his training in the "host" county training program rests upon the "host" county. OAG 75-019.

When the juvenile division of the common pleas court places a child in the temporary custody of a county children services board and that board places the child in a foster home located in a school district other than that in which the child's parents reside, the school district in which the parents reside is not obligated to pay tuition to the school district in which the foster home is located and in which the child attends school. OAG 72-030; overruled in part by OAG 80-095.

School district of residence of parent is responsible for tuition of children of such parent, where such children are inmates of county children's home, attending school in district in which such school is located, and where such children actually and lawfully resided with such parent just prior to their admission to such home. OAG 71-022.

When a child is an inmate of a private, county, semi-public or district children's home located in one school district, and when, prior to being admitted to said institution, he was the "ward" of an "actual resident" of another school district, this latter school district is financially responsible for the education of the child in the public schools of the county in which the children's home is located. OAG 69-119; overruled in part by OAG 80-095.

When a county child welfare board assumes control of a school age child and such child is placed by the board in the county children's home or in a foster home, the child's district of school residence prior to the board's assumption of control must pay tuition to another school district in which the child subsequently attends school. OAG 66-077.

When a child resides in a semi-public children's home located in one school district, and when the child, prior to being admitted to said institution, was the "ward" of an "actual resident" of another school district, this latter school district is financially responsible for the education of the child while he is an inmate of the semi-public children's home. 1963 OAG 545.

The education in public schools of children who are inmates of county children's homes and who are placed by the homes with foster parents should be at the expense of the respective school districts in which such children were school residents at the time of placement in such homes. 1961 OAG 2044.

Where an inmate of a county children's home is placed with foster parents residing outside of the school district in which the home is located, the school district in which the foster home is located may not refuse to provide schooling for such child, but the tuition required by RC 3313.64 must be paid. 1961 OAG 2044.

When a child is committed to a state institution for the feeble-minded the superintendent of such institution becomes the guardian of such child and the child as a ward of such guardian is entitled to a free education in the school district in which the state institution is located. 1960 OAG 1581.

The department of mental hygiene and correction has the authority to transfer a child committed to a state institution to a foster home and as the foster parents would have the care, custody and control of such child the child would be a ward of the foster parents and entitled to a free education in the school district in which the foster home is located. 1960 OAG 1581.

Children who are inmates of a county children's home, and at the time of placement in the home were not school residents of the district in which such home is located, should be admitted to the schools in the district where the

home is located, at the expense of their respective school districts in which they were school residents at the time of placement, notwithstanding the status of the children as to temporary or permanent custody by the county welfare board. 1959 OAG 92; overruled in part by OAG 80-095.

Inmates of a county children's home, nonresidents of the district in which the home is located at the time of placement, should be admitted to schools in such district at the expense of the district in which they were resident, or to schools in another district if the facilities are not available in the district in which the home is located. 1956 OAG 6669.

Method of computing and paying tuition of child who is inmate of private children's home or orphan asylum and attends school in district where such home or asylum is located, and who, previous to his admission to such home or asylum, was resident of another school district of Ohio, is governed and controlled by this statute. 1942 OAG 4711.

When children are committed by a juvenile court to a foster home with or without allowances to such home, the said children should be extended the privileges and advantages of the public schools of the school district in which the home is located, without the payment of tuition for attendance in such school. 1941 OAG 3353.

The proper and only rule authorized by law for computing the cost of educating inmates of public, semi-public and district children's homes, for the purpose of charging back to the school district of their former residence, before admission to the home, the cost of their education, is that set forth in this section, which, by analogy, may be extended to apply to high schools as well as elementary schools, that is, "the average per capita cost except for improvement and repairs," of maintaining the schools of the district. 1932 OAG 4870.

Children who are placed by the trustees of a county, semi-public or district children's home, in so-called boarding homes, should be educated at the expense of the school district which was the last residence of the children before being admitted to the said county, semi-public or district children's home. 1929 OAG p 195.

6. ---- Payment, tuition

Statutes applicable to assignment of responsibility for educational costs of handicapped child did not apply to special education student, where whereabouts of student's father were unknown at time custody of student was awarded to Department of Job and Family Services, and student's mother was known at that time to be living in Missouri, outside purview of orders of Ohio courts. [In re Zachariah T. \(Ohio App. 6 Dist., Wood, 05-20-2005\) No. WD-04-059, 2005-Ohio-2488, 2005 WL 1201213, Unreported. Schools !\[\]\(1a443431c1e7e6ddcc56d663b5f2af6f_img.jpg\) 87](#)

Board of education breached agreement with parents when it failed to reimburse parents for tuition, after parents' property was formally transferred into school district, as was required by agreement under which parents agreed to pay tuition and board agreed to reimburse tuition if transfer of real estate into school district was approved. [Forest Hills Local School Dist. Bd. of Educ. v. Huegel \(Ohio App. 12 Dist., Clermont, 06-30-2003\) No.](#)

[CA2002-07-050](#), [2003-Ohio-3444](#), [2003 WL 21496835](#), Unreported, appeal not allowed [100 Ohio St.3d 1484](#), [798 N.E.2d 1093](#), [2003-Ohio-5992](#). [Schools](#)  [159](#)

Statute specifically directing juvenile court that vests legal custody of child in government agency to determine, as part of its placement order, school district that is to bear cost of educating child and to make this determination in accordance with statute that requires child's tuition to be paid by district in which child's parent resided at time the court removed child from home unless custody was vested in agency at earlier time, governed payment of tuition costs for handicapped child whose mother moved to another district shortly after child's removal from home, even though another section of statute, which dealt specifically with responsibility for tuition costs of handicapped children, would have assigned responsibility to district of mother's new residence. [In re Humerick \(Ohio App. 2 Dist., 03-10-2000\)](#) [137 Ohio App.3d 45](#), [738 N.E.2d 31](#). [Schools](#)  [159](#)

Legal arrangement whereby child's aunt assumed custody "for school purposes only" did not entitle child to attend school in district of child's residence with aunt tuition-free, and payment of her tuition was governed by statute; arrangement did not make child's aunt her "parent" for purposes of statute and did not involve placement of child for adoption. [In re White \(Ohio App. 4 Dist., 06-16-1998\)](#) [128 Ohio App.3d 387](#), [715 N.E.2d 203](#). [Schools](#)  [153](#); [Schools](#)  [159](#)

The issue of cost allocation between the state and county boards of mental retardation for special education services will not be addressed when a related issue of county expenditure restrictions is raised and rejected as an affirmative defense. [Austintown Local School Dist. Bd. of Edn. v. Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities \(Ohio 1993\)](#) [66 Ohio St.3d 355](#), [613 N.E.2d 167](#).

A board of education for city school district was not obliged to enroll in its schools minor children living with their parents in housing projects owned by federal government within school district, which were constructed under provisions of Lanham Act, without payment of taxes, tuition or any other sums in lieu thereof. [State ex rel. Moore v. Board of Ed. of Euclid City School Dist. \(Cuyahoga 1944\)](#) [57 N.E.2d 118](#), [41 Ohio Law Abs. 161](#). [Schools](#)  [159](#)

When, pursuant to [RC 3323.04](#) and an individualized education program, a local school district proposes to place a handicapped child in a program operated pursuant to [RC 3323.09](#) by a county board of mental retardation and developmental disabilities, the county board may not simply refuse the child. The county board of mental retardation and developmental disabilities must resolve any objections to the placement through the procedure contained in [RC 3323.04](#). [Austintown Local School Dist. Bd. of Edn. v. Mahoning Cty. Bd. of Mental Retardation & Dev. Disabilities \(Ohio 1993\)](#) [66 Ohio St.3d 355](#), [613 N.E.2d 167](#).

Under [RC 3313.64\(C\)](#), [3317.08](#), [3323.13](#) and [3323.14](#), the responsibility of paying tuition for the education of a mentally retarded child is with the school district which is the legal residence of the parents of the mentally retarded child. [Austintown Local School Dist Bd of Ed v Mahoning County Bd of Mental Retardation & Developmental Disabilities, No. 90CA27 \(7th Dist Ct App, Mahoning, 11-27-91\)](#), reversed by [66 OS\(3d\) 355 \(1993\)](#).

Once it is determined that a school district is required to pay tuition for a child who does not receive special education, that tuition is, pursuant to RC 3313.64(I) and [3317.023](#), calculated as part of the state aid program, so that the payment of tuition is assured. OAG 94-033.

A school district does not necessarily forfeit its opportunity to receive tuition payments under RC 3313.64(I) if its treasurer submits the tuition information to the superintendent of public instruction after the due dates specified therein; because such due dates are directory rather than mandatory, the superintendent may in his discretion accept tuition information filed after the due dates. OAG 87-101.

When a child lives at a private institution and the custody of the child remains with the child's parents, the child's district of school residence is the district of which his parents are actual residents. That district is required to pay the child's tuition. OAG 80-095.

A board of education may pursuant to RC 3313.64, adopt a policy allowing persons over twenty-one years of age to attend regular high school classes upon the payment of tuition at a rate fixed by the board of education. OAG 76-037.

A board of education which admits a nonresident kindergarten pupil under the age of six years into its system must look to the child's parents or guardian for the collection of tuition, as the district of the child's residence is not liable to the district of attendance for the payment thereof. OAG 69-111.

A board of education is without authority, by rule or otherwise, to waive the payment of tuition by any students in the schools of the district where such students may be admitted to the schools only upon the payment of tuition; and this is true whether or not the students concerned are from foreign countries. 1962 OAG 2766.

When the state board of education has approved a driver training course as part of the regular curriculum of a school district, such school district may not charge tuition to students under twenty-one who are residents of said district or are included in one of the categories specified in RC 3313.64; however, the board may charge tuition for students over twenty-one, regardless of the place of their residence. 1958 OAG 2112.

There is no authority for a board of education conducting a high school to refuse to admit to the high school conducted by it any pupil holding a diploma showing completion of the elementary school work, where such pupil's tuition is paid or will be paid. 1922 OAG p 1068.

7. Establishing residency

State superintendent of public instruction, not court, had authority to resolve residency dispute in connection with house that was located within one school district and driveway and part of landscape on which house sat that was located in a second district. [Forest Hills Local School Dist. Bd. of Educ. v. Huegel \(Ohio App. 12 Dist.,](#)

Clermont, 06-30-2003) No. CA2002-07-050, 2003-Ohio-3444, 2003 WL 21496835, Unreported, appeal not allowed 100 Ohio St.3d 1484, 798 N.E.2d 1093, 2003-Ohio-5992. Schools  153

Mother and her new husband resided in school district in which their home was located, for purposes of statute providing that a child shall be admitted to the schools of the school district in which the child's parent resides, though mother and new husband also owned an adjoining parcel that was located in another school district, and mother and new husband paid property taxes on the other parcel. [Forest Hills Local School Dist. Bd. of Edn. v. Noe \(Ohio Com.Pl., 01-03-2007\) 144 Ohio Misc.2d 1, 877 N.E.2d 756, 2007-Ohio-6082.](#) Schools  153

Residency, for purposes of statute providing that a child shall be admitted to the schools of the school district in which the child's parent resides, depends on such factors as location of parental dwelling structure, being physically present in household for significant periods, and activities such as eating, sleeping, relaxing, and receiving mail. [Forest Hills Local School Dist. Bd. of Edn. v. Noe \(Ohio Com.Pl., 01-03-2007\) 144 Ohio Misc.2d 1, 877 N.E.2d 756, 2007-Ohio-6082.](#) Schools  153

Indications of “residency,” for purposes of statute governing school admission and tuition liability, include being physically present in household for significant periods and activities such as eating, sleeping, relaxing, and receiving mail. [In re White \(Ohio App. 4 Dist., 06-16-1998\) 128 Ohio App.3d 387, 715 N.E.2d 203.](#) Schools  153; Schools  159

When child is in legal custody of agency or person other than parent, school statutes provide that child must be admitted to school in district where child resides. [In re White \(Ohio App. 4 Dist., 06-16-1998\) 128 Ohio App.3d 387, 715 N.E.2d 203.](#) Schools  153

Informal agreement between family or relatives as to care or custody of child does not comply with residency requirements of school statutes; in order for person other than child's parent to obtain legal custody, such that child becomes entitled to be admitted to school in district in which he or she resides, court intervention is necessary. [In re White \(Ohio App. 4 Dist., 06-16-1998\) 128 Ohio App.3d 387, 715 N.E.2d 203.](#) Schools  153

A high school student's parents moved out of the school district but rented an apartment in the district where the student and (for part of the time) his mother lived while the student was completing his senior year, the school attempted to exclude the student from attending on the ground of nonresidence, and the parents filed a complaint and obtained a temporary injunction under [42 USC 1983](#) prohibiting defendants from barring the student from school until “all requirements” of RC 3316.66 were satisfied, and the student subsequently graduated as valedictorian of his class; the school's attempt to bar the student's attendance amounted to expulsion without due process, so that plaintiffs' claim met the substantiality test and they were entitled to attorney fees under [42 USC 1988](#) as the prevailing parties, even though the trial court did not address the merits for purposes of granting the temporary injunction, and even though the parents requested final judgment on a representation of their willingness to dismiss their claim for money damages. [Fenton v. Query \(Hamilton 1992\) 78 Ohio App.3d 731, 605 N.E.2d 1303.](#)

Although it is possible for a person to have more than one legal residence for purposes of RC 3313.64, the mere fact that a custodial parent rents and furnishes an apartment to which the children return every day after school is insufficient to establish residency where it is shown that few meals are eaten there, the custodial parent spends little time at the apartment, and no one sleeps at the apartment. [Board of Educ. v. Day \(Ohio Com.Pl. 1986\) 30 Ohio Misc.2d 25, 506 N.E.2d 1239, 30 O.B.R. 289.](#)

A student residing with his grandfather and not his parents, under an extra-judicial agreement between his parents and grandfather which purports to grant “custody”, may not attend school without paying tuition. [State ex rel. Henry v. Board of Educ., Madison Plains Local Schools \(Madison 1984\) 20 Ohio App.3d 185, 485 N.E.2d 732, 20 O.B.R. 230.](#)

Where parents and children slept in one house and ate breakfast there, but ate the evening meal at another house, at which house lunches are prepared and the family food stored and the laundry is done, the children are eligible to attend schools in either of the districts in which such houses are located. [Baucher v. Board of Ed. of Coldwater Exempted Village School Dist. \(Ohio Com.Pl. 1971\) 31 Ohio Misc. 49, 277 N.E.2d 92, 58 O.O.2d 387, 60 O.O.2d 187.](#)

Pursuant to RC 3313.64 a child who resides in an orphan home is a school resident of the school district in which his father or guardian was a resident at the time such child was placed in the orphan home; and the school district of the father's place of residence at the time of such placement must pay tuition for the education of such child in the school district in which such orphan home is located and where such child receives his education. [Adams v. Funk \(Hamilton 1969\) 19 Ohio App.2d 177, 250 N.E.2d 619, 48 O.O.2d 303.](#)

By virtue of RC 3313.64 the actual residence of the parent or guardian of a child determines which school district is responsible for the education of such child; the place where such child actually lives is not controlling. [Adams v. Funk \(Hamilton 1969\) 19 Ohio App.2d 177, 250 N.E.2d 619, 48 O.O.2d 303. Schools !\[\]\(bc41d2928368291aeb48d45289891271_img.jpg\) 153](#)

A child becomes a “school resident” in a school district as soon as he begins to reside therein as the child or ward of a resident, no specific period of residence being required by RC 3313.64 to entitle him to free schooling in such district. [In re Laricchiuta \(Preble 1968\) 16 Ohio App.2d 164, 243 N.E.2d 111, 45 O.O.2d 456.](#)

A mother's continuing receipt of aid to dependent children from one county after moving to another does not prevent her children from becoming school residents of a district in the county to which she moved with them. [In re Laricchiuta \(Preble 1968\) 16 Ohio App.2d 164, 243 N.E.2d 111, 45 O.O.2d 456. Schools !\[\]\(40ff4926cc4e80920dcd6e30a3ae173f_img.jpg\) 159](#)

Proceedings declaring a child neglected by the juvenile court of another county do not prevent a child from thereafter becoming a school resident in a county to which he moves with his family. [In re Laricchiuta \(Preble 1968\) 16 Ohio App.2d 164, 243 N.E.2d 111, 45 O.O.2d 456.](#)

Court will refuse to appoint older sister as guardian of her younger sister where the sole purpose of the action is to qualify the younger child as a resident of the older sister's community for the purpose of school attendance. *In re DiSalvo* (Ohio Prob. 1967) 11 Ohio Misc. 259, 227 N.E.2d 441, 40 O.O.2d 523.

The parent of a child attending school in a local school district who is physically present and living in a residence located within such district during significant parts of each day and for important purposes consistent with residence, is an "actual resident" of such district and is not liable for the payment of tuition merely because he may have another residence outside the school district. *Board of Ed. of City School Dist. of City of Oakwood v. Dille* (Montgomery 1959) 109 Ohio App. 344, 165 N.E.2d 807, 11 O.O.2d 139.

For school attendance purposes a child becomes a resident in a school district as soon as he acquires any kind of home in that district, whether or not that particular home is permanent or temporary in nature, and whether or not schools are in session at the time he acquires such home. *In re Sheard* (Ohio Juv. 1959) 163 N.E.2d 86, 82 Ohio Law Abs. 259. Schools  153

The statutory procedure for a school district's admission to its school system of a mentally retarded child, whose legal residence is a different school district, is that the school district of the legal residence of the child should contact the school district which is being asked to educate the child and both districts would have to agree and sign a contract concerning the terms of the admission of the child to the non-resident school district, including the payment of tuition by the school district of the legal residence of the child to the school district which is being asked to educate the child. *Austintown Local School Dist Bd of Ed v Mahoning County Bd of Mental Retardation & Developmental Disabilities*, No. 90CA27 (7th Dist Ct App, Mahoning, 11-27-91), reversed by 66 OS(3d) 355 (1993).

For purposes of RC 3313.64, "legal or permanent custody" may be established by a court order, or by evidence of the transfer of temporary custody without a court order in accordance with RC 5103.15. The temporary placement of a child with persons related by blood or marriage in accordance with RC 5103.16(A) does not affect the legal custody of the child for purposes of RC 3313.64(B)(2)(a). A notarized statement that is prepared by the court-designated custodial parent and purports to grant temporary custody of a child to a relative is not an "agreement for temporary custody," as that term is defined in RC 2151.011(B)(17), and does not operate to transfer legal custody for purposes of RC 3313.64(B)(2)(a). OAG 95-032.

When a minor child of divorced parents is in the legal custody of the father pursuant to court order and resides with an aunt in a school district in which neither parent resides, the child is not entitled pursuant to RC 3313.64(B)(2)(a) to be admitted to the schools of the school district in which the child and aunt reside, even if the father prepares a notarized statement that purports to give the aunt temporary custody of the child. If no other statutory provision entitles the child to be admitted to the schools of that school district, the board of education is permitted to admit the child to its schools only upon the payment of tuition for the child. OAG 95-032.

When the minor child of divorced parents is in the legal custody of the father pursuant to court order, the mother

is not named by the court as legal custodian or residential parent, there is no shared parenting order, and pursuant to agreement with the father the child resides with the mother in a school district that is different from the school district in which the father resides, the child is not entitled pursuant to RC 3313.64(B)(1) or RC 3313.64(B)(2)(a) to be admitted to the schools of the school district in which the child and mother reside, even if the father prepares a notarized statement that purports to give the mother temporary custody of the child. If no other statutory provision entitles the child to be admitted to the schools of that school district, the board of education is permitted to admit the child to its schools only upon the payment of tuition for the child. OAG 95-032.

RC 3313.64(B)(2) operates as an exception to RC 3313.64(B)(1), so that a child who is entitled pursuant to RC 3313.64(B)(2) to attend the schools of the school district in which the child resides is not entitled pursuant to RC 3313.64(B)(1) to attend the schools of the district in which the child's parent resides. OAG 94-070.

If a child is placed in the temporary care and custody of a county children services board, and the child resides in a residential care facility that is operated by the board and that is not located in the school district in which the child's parent resides, the child is entitled pursuant to RC 3313.64(B)(2) to attend the schools of the school district in which the residential care facility is located and in which the child resides; because the child is entitled pursuant to RC 3313.64(B)(2) to attend the schools of the district in which the child resides, the child is not entitled pursuant to RC 3313.64(B)(1) to attend the schools of the district in which the child's parent resides. OAG 94-070.

Pursuant to RC 3313.64(B)(2), a child who does not reside in the district in which his parent resides shall be admitted to the schools of the district in which he resides if any of the following applies: (1) he is in the legal or permanent custody of a government agency or a person other than his natural or adoptive parent; (2) he resides in a home; or (3) he requires special education; a handicapped child may be placed in a special education program outside of the district in compliance with RC Ch 3323. OAG 83-041, overruled in part by OAG 94-070.

Pursuant to RC 3313.64(B)(1), a child shall be admitted to the schools of the school district in which his parent resides. OAG 83-041.

An individual appointed by the probate court as guardian of the person of a minor, pursuant to RC Ch 2111, has "legal custody" of the child, as that term is used in RC 3313.64; pursuant to RC 3313.64, a child who is in the legal custody of a guardian shall be admitted to the schools of the district in which the child resides. OAG 83-041, approved and followed by OAG 94-033.

Pursuant to RC 3313.64(B), the school district in which an individual who has legal custody of a child resides must admit the child if: (1) the school district is also the district in which the child's parent resides; or (2) the child resides in the school district. OAG 83-041, overruled in part by OAG 94-070.

When a county agency has legal or permanent custody of a child, that child is considered to be a school resident

of the district in which the agency is located. OAG 80-095.

When children are placed in private foster facilities by the Ohio youth commission pursuant to [RC 5139.07](#), they are school residents of the school district in which the facility is located, and that school district is obligated to provide such children with free education under [RC 3313.64](#), and the school district in which such a home is located may determine to provide such education at the home instead of in the regular schools of the district. OAG 76-055.

Where a mentally retarded resident of Cuyahoga county has been placed by the department of mental health and mental retardation in a nursing home in another county, the individual's "school residence" becomes the school district in which the nursing home is located; but if he is placed in a children's home in the other county, his "school residence" remains in Cuyahoga county, and where such a person's "school residence" remains in Cuyahoga county, that county is financially responsible for his training, but where his "school residence" shifts to the "host" county, that county is financially responsible for his training. OAG 75-019.

A student who has reached the age of 18 is entitled to attend school free in the district of his parents' or guardian's actual residence, or, if he works to support himself by his own labor, in the district in which he is employed. OAG 74-076.

When a child is placed by a county child welfare board in a foster home located in another county, such child is considered a legal resident of the county from which he was placed for the purposes of payment of cost of care. 1964 OAG 1177.

Where the legal residence of the parents of a child placed in a children's home cannot be determined, the school residence of such child is that of the district in which the child was found. 1961 OAG 2044.

Children who are inmates of a county children's home, and at the time of placement in the home were not school residents of the district in which such home is located, should be admitted to the schools in the district where the home is located, at the expense of their respective school districts in which they were school residents at the time of placement, notwithstanding the status of the children as to temporary or permanent custody by the county welfare board. 1959 OAG 92; overruled in part by OAG 80-095.

Inmates of a county children's home, nonresidents of the district in which the home is located at the time of placement, should be admitted to schools in such district at the expense of the district in which they were resident, or to schools in another district if the facilities are not available in the district in which the home is located. 1956 OAG 6669.

A child who resides permanently in the home of an actual resident of a school district and to which child such actual resident stands in loco parentis may attend the public schools of such district without paying tuition, even

though the parents of such child reside outside the district. 1933 OAG 2045.

A child who resides permanently in the home of an actual resident of a school district and to which child such actual resident stands in loco parentis may attend the public schools of such district without paying tuition, even though the parents of such child reside outside the district. 1927 OAG 106.

Married infant females under the age of twenty-one may attend the schools of the district of which they are residents, but may not be compelled to do so under compulsory school laws, though within compulsory school age. 1921 OAG p 951.

8. Guardianship

Court will refuse to appoint older sister as guardian of her younger sister where the sole purpose of the action is to qualify the younger child as a resident of the older sister's community for the purpose of school attendance. [In re DiSalvo \(Ohio Prob. 1967\) 11 Ohio Misc. 259, 227 N.E.2d 441, 40 O.O.2d 523.](#)

An individual who is appointed guardian of the person of a minor, pursuant to RC Ch 2111, has legal custody of the minor for purposes of RC 3313.64. OAG 94-033.

An individual appointed by the probate court as guardian of the person of a minor, pursuant to RC Ch 2111, has "legal custody" of the child, as that term is used in RC 3313.64; pursuant to RC 3313.64, a child who is in the legal custody of a guardian shall be admitted to the schools of the district in which the child resides. OAG 83-041, approved and followed by OAG 94-033.

For purposes of RC 3313.64, the term "guardian" must be given a liberal construction, and can include a person who stands in loco parentis to an adult student. OAG 74-076.

When a child is committed to a state institution for the feeble-minded the superintendent of such institution becomes the guardian of such child and the child as a ward of such guardian is entitled to a free education in the school district in which the state institution is located. 1960 OAG 1581.

9. Books and special fees

A board of education may charge a fee for parking on school-owned property for school functions, but may not charge such a fee to students who are attending classes. OAG 74-063.

The board of education of a city, exempted village, or local school district may prescribe a schedule of fees for the use of musical instruments owned by the school district and used in the teaching of music as a part of a school's curriculum, such fees to be paid by the pupils using the instruments. 1962 OAG 3438.

Child who is an inmate of a county, semi-public or district children's home, and who before admission or commitment to such home had been a resident of the school district in which the home is located, is entitled to the privileges afforded by any and all of the public schools of the district, and the board of education of said school district is required to furnish such child with the necessary school books, if the same cannot be furnished by the parents or guardian of the child. 1929 OAG p 1535.

10. Transportation of pupils

The cost of transporting pupils should be taken into consideration in determining the cost of educating inmates of public or semi-public children's homes where circumstances are such that the cost of that education is charged back to the district of the former residence of such inmates. 1932 OAG 4870.

To determine the average per capita cost of maintaining a public school, consideration should be given to all items of expense of conducting the school, including the cost of transporting pupils. 1932 OAG 4870.

Laws providing for the transportation of pupils attending the public schools inure to the benefit of all pupils attending such schools who are under twenty-one years of age. 1930 OAG 2149.

11. Desegregation

Mandamus lies to enforce order to admit children of the colored race to public schools on equal terms with white children. [Board of Education of School Dist. of City of Dayton v. State \(Ohio 1926\) 114 Ohio St. 188, 151 N.E. 39, 24 Ohio Law Rep. 220.](#)

The power of boards of education to assign students of the district to schools cannot be exercised with reference to the race or color of the youth; no regulation can be made that does not apply to all children irrespective of race or color pursuant to 84 Ohio Laws 34, effectively abolishing separate schools. [Board of Education of Village of Oxford v. State ex rel. Gibson \(Ohio 1888\) 45 Ohio St. 555, 19 W.L.B. 173, 16 N.E. 373.](#)

Separate schools for colored children are abolished. [State v. Board of Ed. of Village of Oxford \(Ohio 1887\) 1 Ohio C.D. 640.](#)

A school district held to have had a dual system in 1954 has a continuing duty to eradicate that system. [Dayton Bd. of Ed. v. Brinkman \(U.S.Ohio 1979\) 99 S.Ct. 2971, 443 U.S. 526, 61 L.Ed.2d 720, rehearing denied 100 S.Ct. 186, 444 U.S. 887, 62 L.Ed.2d 121.](#)

A plaintiff seeking to show a denial of equal protection of the laws by a school board must show a forbidden purpose to segregate pupils by race; evidence that acts of the board caused foreseeable and anticipated disparity in treatment is relevant to prove that purpose. [Columbus Bd. of Ed. v. Penick \(U.S.Ohio 1979\) 99 S.Ct. 2941,](#)

443 U.S. 449, 61 L.Ed.2d 666, rehearing denied 100 S.Ct. 186, 444 U.S. 887, 62 L.Ed.2d 121, on remand 519 F.Supp. 925.

Since the adopted “Dayton Plan” fails to eliminate the continuing effects of past segregation, it is constitutionally inadequate. [Brinkman v. Gilligan \(C.A.6 \(Ohio\) 1974\) 503 F.2d 684](#).

The terms of the Equal Educational Opportunity Act of 1974 did not limit the nature or scope of the remedy in this case. [Brinkman v. Gilligan \(C.A.6 \(Ohio\) 1974\) 503 F.2d 684](#).

12. Procedural issues

Trial court, having dismissed tuition and fraud claims of board of education on jurisdictional grounds, rendered advisory opinion when it considered these claims, which opinion could not be relied upon as being the final judgment of the trial court. [Forest Hills Local School Dist. Bd. of Educ. v. Huegel \(Ohio App. 12 Dist., Clermont, 06-30-2003\) No. CA2002-07-050, 2003-Ohio-3444, 2003 WL 21496835](#), Unreported, appeal not allowed 100 Ohio St.3d 1484, 798 N.E.2d 1093, 2003-Ohio-5992. [Constitutional Law](#) 🔑 2604

Mother's former husband, who was natural father of mother's two children, was not necessary party in action for tuition reimbursement brought by local school district in which children attended school, which was not the district in which mother and children resided, where former husband was not residential parent of the children, nor was he their legal custodian. [Forest Hills Local School Dist. Bd. of Edn. v. Noe \(Ohio Com.Pl., 01-03-2007\) 144 Ohio Misc.2d 1, 877 N.E.2d 756, 2007-Ohio-6082](#). [Schools](#) 🔑 159

Mandamus lies to compel the auditor to issue his warrant as required by this section. [State ex rel. King v. Sherman \(Ohio 1922\) 104 Ohio St. 317, 135 N.E. 625, 19 Ohio Law Rep. 712, 19 Ohio Law Rep. 738](#).

Notice and hearing usually precede removal of the student from school premises. Immediate removal may be justified if the student's presence is a danger to persons or property or if the academic process will be disrupted. [Goss v. Lopez \(U.S. Ohio 1975\) 95 S.Ct. 729, 419 U.S. 565, 42 L.Ed.2d 725](#).

Pursuant to RC 3313.64(B)(2)(a), a child who is in the legal or permanent custody of a government agency or a person other than his natural or adoptive parent and whose parents reside outside Ohio must be admitted to the schools of the district in which the child resides. OAG 94-033.

For purposes of RC 3313.64, “legal custody” or “permanent custody” may be established by a court order, or by evidence of the transfer of custody without a court order in accordance with [RC 5103.15](#) or [5103.16](#). OAG 94-033.

13. Funding issues

A board of education which has, pursuant to RC 3313.64, admitted persons over twenty-one years of age to regular high school classes, may not count such students in computing its average daily membership under [RC 3317.03](#) for purposes of state foundation payments under RC Ch 3317. OAG 76-037.

The cost of administering the testing program pursuant to [RC 3321.01](#) must be paid from public funds. OAG 67-126.

The child welfare board of a county, the county commissioners of such county, and a board of education of a district situated in such county have authority to contract with each other to provide special training for mentally retarded children on such terms as they deem proper. 1951 OAG 447.

The county commissioners have authority to appropriate funds and pay the same to the board of education for a portion of the cost of operating training schools for mentally retarded children. 1951 OAG 447.

R.C. § 3313.64, OH ST § 3313.64

Current through 2009 File 6, of the 128th GA (2009-2010), apv. by 7/6/09 and filed with the Secretary of State by 7/6/09.

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