

LEGAL MAILBAG – SEPTEMBER 19, 2024



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

The beginning of the school year always includes a number of new registrations for school, and sometimes people other than the parents ask to register students they claim are living with them. We want to be welcoming to these prospective students, but our consistent procedure has been to require that the adult seeking to register a student under such circumstances must provide proof of guardianship. We have this requirement for two reasons: first, to assure that the living arrangements are legitimate, and second, to assure that we have a contact in town who can provide consent as necessary, including consent for emergency medical treatment if that need ever comes up.

Last week, a fellow showed up seeking to register a fourth-grade student. He claimed that the child is his sister’s son, and that given some personal difficulties the sister is experiencing, the nephew is now living with him. He balked, however, when we informed him of our requirement that he provide proof of guardianship. He claims that he did not sign up for that, but rather has simply agreed to let his nephew live with him while his sister gets her act together.

I am sympathetic to this fellow’s concerns, and I am tempted to let him register his nephew in our school. But I am concerned about setting a precedent -- if I waive the rule for him, what do I say to the next person in the same situation? Should I just say no?

Signed,
Rules Are Rules

Dear Rules:

Legal Mailbag appreciates your concern for consistency. Treating similarly situated persons the same is actually a constitutional requirement under the Fourteenth Amendment, which provides in part that no state actor shall “deny to any person within its jurisdiction the equal protection of the laws.” The problem here is that the district’s requirement that the person with whom a student resides for school purposes have guardianship is inconsistent with state law.

Each school district in Connecticut is responsible for providing school accommodations to resident children, and eligibility for free school privileges is typically determined on the basis of the residence of the student, *i.e.*, the factual question of where the student actually resides. Long ago, the Connecticut Supreme Court ruled that “residence” for school purposes is not to be interpreted technically, but rather in the “ordinary and popular meaning of the word.” *Yale v. West Middle School*, 59 Conn. 489, 491 (1890). *See also New Haven v. Torrington*, 132 Conn. 194 (1945). If the child is actually living within a school district, the student has the right to be educated there. A further requirement that the person with whom the student lives be a guardian is inconsistent with this principle.

Conn. Gen. Stat. § 10-253(d) sets forth the framework for eligibility for school privileges when students live apart from their parents. That statute provides in relevant part:

(d) Children residing with relatives or nonrelatives, when it is the intention of such relatives or nonrelatives and of the children or their parents or guardians that such residence is to be permanent, provided without pay and not for the sole purpose of obtaining school accommodations . . . shall be entitled to all free school privileges accorded to resident children of the school district in which they then reside.

As you will note, guardianship is not one of the conditions that apply in such situations. Indeed, we read that a student is entitled to free school privileges “when it is the intention of such relatives or nonrelatives ***and of the children or their parents*** or guardians that such residence is to be permanent, provided without pay and not for the sole purpose of obtaining school accommodations.” (Emphasis added). Given that little word “or” in the statute, it is clear that the parents do not have to agree to the arrangement, and even a child who runs away from home to live with a relative or friend is entitled to free school privileges in the town where they then reside if such residence is “permanent, provided without pay and not for the sole purpose of obtaining school accommodations.”

Given these statutory conditions, there can be circumstances when a child living apart from a parent is not entitled to free school privileges in another town. Each such case must be considered on the specific facts of the arrangements. The Residency Guidelines published by the State Department of Education in its [School Accommodations Workshop Package](#) at 32 (2008), though published fifteen years ago, continue to provide helpful guidance on the factors to consider in determining eligibility for school privileges when students are living apart from

their parents. In your case, however, it is clear that you and your district cannot require proof of guardianship as a condition for registering a student who is otherwise eligible for school privileges under Section 10-253(d). Accordingly, permitting the uncle to register his nephew for school is not setting a bad precedent, but rather is simply following the law.

Finally, Legal Mailbag notes your concern that the district should have contact information for the decision-maker, because consent may be required for school activities or even medical treatment in an emergency. That is a legitimate concern, and the district can insist on knowing who is authorized to make decisions on behalf of the student. That concern may even impel the uncle here to become the guardian so that he would have such authority. However, that is separate from the right to attend school, and the mother of the student must decide whether she will remain the contact person to provide consent as needed or if she will delegate that authority to her brother through guardianship or otherwise.