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## Grandparents Caretaker Law

*This fact sheet is designed to address the most frequently asked questions about the Grandparent Caretaker Law in Ohio. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.*

### What is the Grandparent Caretaker Law?

In many families, grandparents act as parents for their grandchildren. Often, no legal steps to obtain custody have been taken or no formal change in custody is desired. However, schools have legal options to properly enroll these students. This fact sheet is to inform you about the law regarding grandparent caretakers and enrollment of grandchildren.

### Background

In 1997, House Bill (HB) 215 created a task force to study the issue of grandparents raising their grandchildren. A major recommendation of the task force was to create a law for a notarized affidavit that recognizes the grandparent as the child's full-time caregiver with the right to enroll the child in school and authorize medical care. In every General Assembly since that time, a bill has been introduced to implement the task force's recommendations. In April 2004, Gov. Bob Taft signed into law HB 130, the Grandparent Caretaker Bill, which implemented some of the recommendations of the task force. The law became effective on July 20, 2004.

### General information

HB 130 made a number of changes to the law regarding child custody, school enrollment and school tuition with regard to a grandparent's rights.

The law creates two legal documents: a power of attorney and a caretaker authorization affidavit. Both documents allow a grandparent with a grandchild living with them to enroll the grandchild in school and make other educational decisions for the child. Both documents must be notarized and filed with the juvenile court or court of appropriate jurisdiction within five days of their execution. The legislation prescribes a form that must be used for both documents and delineates the specific circumstances under which each document can be created. Samples of these forms are appended to this fact sheet.

Under Ohio Revised Code Section (RC) 3109.52, the power of attorney is created by a parent, guardian or custodian and "grants to the grandparent of the child with whom the child is residing any of the parent's, guardian's or custodian's rights or responsibilities regarding the care, physical custody and control of the child, including the ability to enroll the child in school, to obtain from the school district educational and behavioral information about the child, to consent to all school-related matters regarding the child, and to consent to medical, psychological or dental treatment for the child." A power of attorney does not convey legal custody of the grandchild to the grandparent and does not affect the rights of a parent, guardian or custodian in any future proceedings.

Under RC 3109.65, a caretaker authorization affidavit may be executed by a grandparent who has made "reasonable attempts to locate and contact both of the child's parents or the child's guardian or custodian, but has been unable to do so." The caretaker authorization affidavit gives the grandparent the "authority to exercise care, physical custody and control of the child, including the authority to enroll the child in school, to discuss with the school district the child's

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educational progress, to consent to all school-related matters regarding the child, and to consent to medical, psychological or dental treatment for the child.”

Neither document may be used to enroll a child in a school district so that the child may participate in academic or interscholastic athletic activities. If either document is executed for these purposes, the document is void from the date of execution. Persons who execute either document for such a purpose can be prosecuted for the criminal offense of falsification of a legal document.

#### **When can a power of attorney be executed?**

A power of attorney may be executed only if one of the following circumstances exists:

- the parent is seriously ill, incarcerated or about to be incarcerated, is temporarily unable to provide financial support or parental guidance, is temporarily unable due to a physical or mental condition to provide adequate care and supervision of the child, is homeless or without a residence because the current residence has been destroyed or is otherwise uninhabitable, or is in or about to enter into a residential program for substance abuse, or
- the child’s other parent is deceased and the parent has the authority to execute the power of attorney, or
- the parent has a well-founded belief that the power of attorney is in the best interest of the child.

The power of attorney is created by using a form provided in RC 3109.53 and must be signed by the parent(s), guardian(s) or custodian(s) and by the grandparent and signatures must be notarized. The parent(s), guardian(s) or custodian(s) must file the power of attorney within five days with the juvenile court in the county where the grandparent resides or in any other court having jurisdiction over the child.

#### **When can a caretaker authorization affidavit be executed?**

A caretaker authorization affidavit may be executed by a grandparent if the child is living with the grandparent and the grandparent has made “reasonable attempts” to locate and contact both of the child’s parents or the child’s guardian or custodian, but has been unable to do so. The grandparent is not obligated to attempt to locate a parent if the child’s paternity has not been established, where a parent is prohibited from receiving notice of relocation or where the parent’s parental rights have been terminated. The caretaker authorization is created by the grandparent by using a form provided in RC 3109.66 and must be signed by the grandparent, notarized, and filed by the grandparent within five days in the juvenile court in the county where the grandparent resides or in any other court having jurisdiction over the child.

Neither the power of attorney nor the caretaker authorization affidavit may be executed while certain legal proceedings concerning the child are pending. These include the appointment of guardian, adoption proceedings, custody proceedings, or a divorce, dissolution, separation, annulment or allocation of parental rights and responsibilities proceeding. (RC 3109.58)

#### **What must a school district do to comply with this law?**

First, a school district should ensure its admissions policies reflect the law. Second, school officials should ask if either of these documents applies when a child is being enrolled in the district. Under RC 3313.672, a copy of the power of attorney or caretaker authorization affidavit must be produced in order for a child to be enrolled under it in a school district.

#### **Can our school district charge tuition for a child admitted under a grandparent power of attorney or caretaker authorization affidavit?**

No. A school district must admit a child subject to one of these documents into the district free of tuition. The law does not require a school district to accept a student if he or she can be excluded for other reasons, such as being suspended or expelled from a previous school district.

#### **May a district require proof that the grandparent lives in the school district?**

Yes. The prescribed forms found in the law clearly state that a school district may require additional evidence that the grandparent resides at the claimed address.

#### **How do the documents terminate?**

Both the power of attorney and caretaker authorization affidavit terminate after any of the following events:

- the passage of one year,
- the child ceases to reside with the grandparent,
- the document is terminated by court order, or
- the grandchild or grandparent dies.

A power of attorney also terminates if the person who created it revokes it in writing. A caretaker authorization affidavit is terminated if the parent, custodian or guardian of the child acts to negate, reverse or otherwise disapprove an action or decision of the grandparent by delivering written notice of the negation, reversal, or disapproval to the grandparent and to the person acting on the grandparent’s action or decision in reliance on the affidavit.

Whenever one of these terminating events occurs (excluding the death of the grandparent), it is the responsibility of the grandparent to inform all relevant parties, in writing, including the school district, within

one week of the terminating event.

**May these documents be renewed?**

Yes. Although the documents expire after one year, they may be re-executed and refiled in order to enroll the student for subsequent years.

**What happens if we rely on the validity of the documents?**

Under RC 3109.61 and 3109.73, a person who relies on or takes action based on either document in good faith is "immune from criminal or civil liability for

injury, death, or loss to persons or property that might otherwise be incurred or imposed solely as a result of the person's reliance or action." The law also shields a person from disciplinary action from any entity that licenses or certifies an individual.

**Can there be more than one document executed for a child at one time?**

No. RC 3109.80 specifically states that only one power of attorney or caretaker authorization affidavit may be in effect at a time.