

Note from the Attorney General's Office:

1994 Op. Att'y Gen. No. 94-033 was overruled in part
by 1995 Op. Att'y Gen. No. 95-032.

OPINION NO. 94-033**Syllabus:**

1. Pursuant to R.C. 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.
2. For purposes of R.C. 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 R.C. 5103.15 or 5103.16.
3. An individual who is appointed guardian of the person of a minor, pursuant to R.C. Chapter 2111, has legal custody of the minor for purposes of R.C. 3313.64. (1983 Op. Att'y Gen. No. 83-041, syllabus, paragraph 3, approved and followed.)
4. When a child who does not receive special education is admitted to school pursuant to R.C. 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 R.C. 3313.64(C)(2)(d) does not apply, then tuition is paid by the school district determined pursuant to R.C. 3313.64(C)(2)(a)-(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 R.C. 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.
5. 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 R.C. 3313.64(I) and 3317.023, calculated as part of the state aid program, so that the payment of tuition is assured.

To: Anthony L. Gretick, Williams County Prosecuting Attorney, Bryan, Ohio
By: Lee Fisher, Attorney General, May 31, 1994

You have requested an opinion on several questions concerning the obligation of a board of education to admit to its schools children who are residing with persons other than their parents, and the payment of tuition for children who are so admitted. Some of your questions pertain, in particular, to situations in which the parents reside outside Ohio.

Legal or Permanent Custody

Your first question relates to R.C. 3313.64(B)(2)(a), which provides that a child who does not reside in the school district in which his parent resides shall be admitted to the schools

of the district in which the child resides if the child "is in the legal or permanent custody of a government agency or a person other than his natural or adoptive parent."¹ Your question is what documentation is required to establish "legal or permanent custody" for purposes of R.C. 3313.64(B)(2)(a).

R.C. 3313.64(A)(2) states that the terms "[l]egal custody" and "permanent custody," as used in R.C. 3313.64-.65, have the same meanings as in R.C. 2151.011. R.C. 2151.011(B) contains the following definitions:

(9) "*Legal custody*" means a *legal status* which vests in the custodian the *right to have physical care and control of the child* and to determine where and with whom he shall live, and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities....

....

(11) "*Permanent custody*" means a *legal status* which vests in a public children services agency or a private child placing agency, *all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations.* (Emphasis added.)

"Temporary custody" is a type of legal custody. R.C. 2151.011(B)(12) states:

"*Temporary custody*" means *legal custody of a child who is removed from his home, which custody may be terminated at any time at the discretion of the court or, if the legal custody is granted in an agreement for temporary custody, by the person who executed the agreement.* (Emphasis added.)

As your letter of request indicates, prior to January 1, 1989, it was clear that legal or permanent custody could be transferred only by court order. Prior to that date, the definitions of "legal custody" and "permanent custody" appearing in R.C. 2151.011 included express references to action by a court. See 1987-1988 Ohio Laws, Part I, 198, 200-201 (Am. Sub. S.B. 89, eff. July 20, 1988, with statutory amendments taking effect on Jan. 1, 1989) (prior definition of "[l]egal custody" as a "legal status created by court order"; prior definition of "[p]ermanent custody" as a "legal status created by the court"; prior definition of "[t]emporary custody" as "legal custody as defined in [R.C. 2151.011], which may be terminated at any time

¹ R.C. 3313.64(A)(1) defines "parent" as follows:

"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 his 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 his 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 him and be the legal custodian of the child and all residual parental rights, privileges, and responsibilities.

in the discretion of the court"); *see also, e.g., Angle v. Children's Services Div., Holmes County Welfare Dept.*, 63 Ohio St. 2d 227, 407 N.E.2d 524 (1980) (finding legal transfer of permanent custody of a child to a county child welfare board or department contingent upon consent to the transfer by the juvenile court). In *State ex rel. Henry v. Board of Education*, 20 Ohio App. 3d 185, 485 N.E.2d 732 (Madison County 1984), the Court of Appeals cited those definitions in support of the conclusion that, without court intervention, a child could not be in the legal or permanent custody of a person other than his parents for purposes of R.C. 3313.64(B)(2). Effective January 1, 1989, however, Am. Sub. S.B. 89 amended the definitions of "legal custody" and "permanent custody" (then appearing in R.C. 2151.011(B)(10) and (12)) to eliminate references to court action. Am. Sub. S.B. 89 also amended the definition of "temporary custody" so that, as quoted above, it now recognizes that this type of legal custody may be granted by agreement of a person other than a court. The question is whether, in light of these statutory changes, something less than a court order is now sufficient to establish legal or permanent custody for purposes of R.C. 3313.64.

The fact that R.C. 3313.64(A)(2) adopts definitions from R.C. 2151.011 indicates that the schooling provisions do not have a concept of legal or permanent custody that is unique to their operation. Rather, a child who is in legal or permanent custody under R.C. Chapter 2151 or related provisions is in that same custody status for purposes of R.C. 3313.64.

R.C. Chapter 2151 contains provisions governing the juvenile courts, and it is clear that an order of court can establish the legal or permanent custody of a child. *See, e.g.,* R.C. 2151.23(A)(2); R.C. 3109.04, .06; 16 Ohio Admin. Code 5101:2-42-04; Juv. R. 34(C); 1983 Op. Att'y Gen. No. 83-041. There are, however, statutory provisions that expressly permit the transfer of legal or permanent custody of a child without action of a court. R.C. 5103.15(A)(1) permits the parents, guardian, or other persons having the custody of a child to enter into an agreement with a public children services agency or private child placing agency to place the child, without the approval of the juvenile court, in the temporary custody of the agency for a period of up to thirty days or, if the agreement is for the adoption of a child under six months of age, for a period of up to sixty days. Court approval is required for extensions of such agreements. R.C. 5103.15(A)(2), (3). R.C. 5103.15(B) generally requires court approval of the transfer of permanent custody of a child to a public children services agency or private child placing agency, but does not require court approval of the surrender of the permanent custody of a child to a private child placing agency if the agreement is executed solely for the purpose of obtaining an adoption of a child who is less than six months of age. Agreements made pursuant to R.C. 5103.15 must be in writing on forms furnished by the Ohio Department of Human Services. R.C. 5103.15(C). *See generally* 16 Ohio Admin. Code 5101:2-42-08 to -091.

R.C. 5103.16 also permits the transfer of custody of a child without action by the court. R.C. 5103.16(A) governs the placement of children, as follows:

Except as otherwise provided in this section, no child shall be *placed or accepted for placement under any written or oral agreement or understanding that transfers or surrenders the legal rights, powers, or duties of the legal parent, parents, or guardian of the child* into the temporary or permanent custody of any person, association, or institution that is not certified by the department of human services, as provided in [R.C. 5103.02 and R.C. 5103.03], without the *written consent of the department, or by a commitment of a juvenile court, or by a commitment of a probate court* as provided in this section. *A child may be placed temporarily without written consent or court commitment with persons related by blood or marriage, or in a legally licensed boarding home.* (Emphasis added.)

With certain exceptions, R.C. 5103.16 applies to the placement of children for adoption, see *In re Adoption of Murphy*, 53 Ohio App. 3d 14, 557 N.E.2d 827 (Wood County 1988), and also covers other types of placement, see *In re Tilton*, 161 Ohio St. 571, 120 N.E.2d 445 (1954) (placement of child by mother with mother's brother and sister-in-law, without adoption); *In re Adoption of Howell*, 77 Ohio App. 3d 80, 601 N.E.2d 92 (Lawrence County 1991) (temporary placement pursuant to R.C. 5103.16 preceded petition for adoption), *motion to certify overruled*, 62 Ohio St. 3d 1508, 583 N.E.2d 1320 (1992). R.C. 5103.16(B) refers expressly to the placement of children "in free foster homes or for legal adoption" and of the "temporary and permanent surrenders of children." See also R.C. 5103.16(C). R.C. 5103.02 excludes from the purview of R.C. 5103.03-19 "any individual who provides care for only a single-family group, placed there by their parents or other relative having custody."

R.C. 5103.16(A) prohibits the placement of a child that involves a transfer or surrender of legal rights of the parent or guardian if the person, association, or institution receiving temporary or permanent custody is not certified by the Ohio Department of Human Services (the Department), unless there is written consent of the Department or a commitment of a juvenile or probate court. R.C. 5103.16(A) does, however, permit the temporary placement of a child with persons related by blood or marriage, or in a legally licensed boarding home, even if there is no court commitment or written consent of the Department. See *In re Tilton*; see also R.C. 2151.011(B)(12). It has been established under Ohio law that a parent who, pursuant to a valid contract, transfers the right to custody of a child is bound by the contract. See generally *Clark v. Bayer*, 32 Ohio St. 299 (1877); *Rowe v. Rowe*, 44 Ohio Op. 224, 97 N.E.2d 223 (Ct. App. Franklin County 1950). R.C. 5103.15 and 5103.16 define the exercise of this right of contract. See *In re Adoption of Bolling*, 83 Ohio App. 1, 82 N.E.2d 135 (Cuyahoga County 1948); *In re Brenda H.*, 37 Ohio Misc. 123, 126, 305 N.E.2d 815, 817 (C.P. Cuyahoga County 1973).

Under the provisions discussed above, a child may be in the legal or permanent custody of a person other than his parent even though there has been no action by a court ordering or approving a change of custody. If there is no court order, "legal custody" or "permanent custody" may be established by evidence of the transfer of custody without a court order in accordance with R.C. 5103.15 or 5103.16. Under R.C. 5103.15, evidence of custody will take the form of an agreement between a public children services agency or private child placing agency and the parents, guardian, or other person who previously had custody of a child. Under R.C. 5103.16, change of custody may be established by: (1) written consent of the Department of Human Services to placement into the temporary or permanent custody of a person, association, or institution that is not certified by the Department of Human Services; (2) commitment of a juvenile court; (3) commitment of a probate court; or (4) evidence of temporary placement, without court commitment or written consent of the Department, with persons related by blood or marriage, or in a legally licensed boarding home.

The provisions of R.C. 5103.15 and 5103.16 thus provide various methods for the transfer of "legal custody," as that term is defined in R.C. 2151.011(B)(9). Pursuant to R.C. 3313.64(A)(2), legal or permanent custody as determined under R.C. 2151.011 is the basis for establishing legal or permanent custody for school admission under R.C. 3313.64(B)(2)(a). It follows that, for purposes of R.C. 3313.64, "legal custody" or "permanent custody" may be established either by a court order or by evidence of the transfer of custody without a court order in accordance with R.C. 5103.15 or 5103.16.²

² Notwithstanding the absence of a reference to a court order in the definitions of legal and permanent custody appearing in R.C. 2151.011(B)(9) and (11), one prominent commentator has taken the position that action by a court is necessary to establish legal or permanent custody for

Which person or entity has custody of a child is a question of fact. Where there is a court order or written consent of the Department of Human Services, the matter of custody can be determined by reference to such document. In other situations -- as, for example, transfer of custody to a relative without court commitment or written consent of the Department -- determination of custody may be more difficult. The legal standard is that set forth in R.C. 2151.011(B)(9). To have legal custody, the custodian must, at a minimum, have "the right to have physical care and control of the child and to determine where and with whom he shall live, and the right and duty to protect, train, and discipline him and to provide him with food, shelter, education, and medical care." R.C. 2151.011(B)(9). If a child lives with a person who does not have these rights, the child is not in the legal custody of that person. *See generally, e.g., In re Adoption of Howell*, 77 Ohio App. 3d at 93, 601 N.E.2d at 100 (it may be argued that no one had legal custody of the child where custody was granted to the father in divorce decree, the father died and paternal grandparents had physical custody of the child, but no court action was initiated to determine legal custody); *Lucas v. Lucas*, 114 Ohio App. 474, 183 N.E.2d 138 (Brown County 1961) (child resided with paternal grandparents while father, who lived out of state, had custody of the child). As your letter suggests, a notarized statement by a parent may be used as evidence of the custody of a child. There is, however, no provision of statute that makes such a document determinative of the issue of who has custody of a particular child.³

purposes of R.C. 3313.64(B)(2)(a). *See* 1 R. Baker & K. Carey, *Ohio School Law* §9.01, at 413 n. 11 (1993-94 Revision) (stating that the apparent purpose of the deletion of the words "created by a court" from the definition of "legal custody" was, in accordance with R.C. 5103.15(A)(1), "to accommodate an emergency procedure for the voluntary relinquishment of temporary custody to children's services boards in cases of active child abuse or neglect"). While this interpretation may reflect an accurate assessment of the intent of some legislators, it fails to apply the plain statutory language now appearing in R.C. 2151.011(B)(9) and (11) to the provisions of R.C. 3313.64(B)(2)(a). *See generally Slingluff v. Weaver*, 66 Ohio St. 621, 621, 64 N.E. 574, 574 (1902) (syllabus, paragraph 2) ("the intent of the law-makers is to be sought first of all in the language employed The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction").

³ The analysis set forth above may result in practical problems in determining the custody of particular children, for it does not require that there always be a court order to establish a transfer of custody from the parents. It is, however, always possible to resolve questions of custody by means of a judicial proceeding. *See* R.C. 2151.23(A)(2).

The foregoing analysis may also raise some concerns with respect to school funding. R.C. 3313.64(C), which governs the payment of tuition for a child who is admitted to school under R.C. 3313.64(B)(2), provides that, for a child admitted pursuant to R.C. 3313.64(B)(2)(a), tuition will be paid by: (1) the school district that was the residence of the child's parent at the time the court removed the child from his home or at the time the court vested legal or permanent custody of the child in a government agency or person other than the child's parent; (2) the district that was the residence of the child at that time; (3) the district determined by the court pursuant to R.C. 2151.357 when it vested custody of the child in the person or government agency; or (4) the district determined under R.C. 3313.65(D) if one parent was in a residential or correctional facility or a juvenile residential placement and the other parent was not known to reside in Ohio at the time the court removed the child from his home or vested custody in the person or government agency. The statute thus provides for the payment of tuition on the basis of residence when the court removed the child from his home

Guardianships

Your letter makes specific reference to guardianships. Whether the existence of a guardianship establishes a right to attend school in a particular district depends upon the nature of the guardianship. See R.C. 2151.011(B)(18) (defining "[g]uardian" to mean "a person, association, or corporation that is granted authority by a probate court pursuant to [R.C. Chapter 2111] to exercise parental rights over a child to the extent provided in the court's order and subject to the residual parental rights of the child's parents"). If a guardian has been granted rights that constitute legal custody of a child as defined in R.C. 2151.011(B)(9), then the child is, in accordance with R.C. 3313.64(B)(2)(a), entitled to attend school in the district in which the guardian resides. If a guardian has lesser rights, which do not constitute legal or permanent custody, then the guardianship does not affect the school which the child is entitled to attend pursuant to R.C. 3313.64, even if the child resides with the guardian. See generally R.C. 2111.01(A), .02. As discussed in Op. No. 83-041, at 2-153 to 2-155, an individual who is appointed guardian of the person of a minor, pursuant to R.C. Chapter 2111, has legal custody of the minor for purposes of R.C. 2151.011 and R.C. 3313.64. See R.C. 2111.01(A), .06-.07, .13, .15. A child who is in the custody of such a guardian may, in accordance with R.C. 3313.64(B)(2), attend schools of the district in which the child resides. The existence of such a guardianship will be evidenced by a court appointment awarded pursuant to R.C. Chapter 2111.

Tuition When Parents Reside Outside Ohio

Your second question relates to a situation in which a child is in the legal custody of a person other than his natural or adoptive parent and the child's parents reside outside Ohio.⁴

or vested custody of the child in a government agency or person other than the child's parent, or by the district determined by the court at that time. There is no provision for the payment of tuition if the custody of the child changed without a court order. Pursuant to R.C. 3313.64(B)(3) and (C), a child who is placed for adoption is entitled to be admitted to school without the payment of tuition, even though the child is not in the legal or permanent custody of a government agency or person other than his parent, unless the placement for adoption has been terminated or another school district is required to admit the child because of his parent's residence. No statutory provision expressly addresses the payment of tuition for a child whose custody changes without court order and without placement for adoption. Since no provision is made for tuition reimbursement in such circumstances, it appears that the school district that admits the child must bear the cost of educating the child. This result may, however, place a burden upon that district which would not exist if the transfer of custody had been made pursuant to court order. This interpretation effects a change in the operation of the tuition provisions based on the amendment to the definitions in R.C. 2151.011. It is not clear whether the General Assembly intended such a result. See note 2, *supra*. Various schemes for tuition payment have been in effect in Ohio in the past, and this arrangement bears some similarity to earlier statutory schemes. See, e.g., 1983 Op. Att'y Gen. No. 83-041, at 2-157 n. 7 (stating that, under law in effect prior to July 1, 1981, "a child who was in the legal or permanent custody of a guardian (other than the child's parent) could attend school in the school district in which the guardian resided, without the payment of tuition by another school district or institution").

⁴ This opinion does not address school attendance or tuition payment in the case of a child who resides in Ohio with a person other than his parents when the legal custody of the child remains with the child's parents in another state.

Your question is who is responsible for the payment of tuition in such circumstances. "Parent" is defined in R.C. 3313.64(A)(1). See note 1, *supra*.

R.C. 3313.64(C) governs the payment of tuition when a child is admitted to school pursuant to R.C. 3313.64(B)(2).⁵ R.C. 3313.64(C) states, in part:

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, tuition shall be paid 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 he resides in a home.

(2) 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 his home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first; or*

(b) *If the parent's residence at the time the court removed the child from his home or placed him 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 he was removed from his home or placed in legal or permanent custody, whichever occurred first; or*

(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 2151.357 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 his 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.*

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

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

⁵ R.C. 3313.64(B)(2) states:

A child who does not reside in the district where his parent resides shall be admitted to the schools of the district in which he resides if any of the following applies:

(a) He is in the legal or permanent custody of a government agency or a person other than his natural or adoptive parent.

(b) He resides in a home.

(c) He requires special education.

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

When a child receives special education in accordance with R.C. Chapter 3323, tuition is paid in accordance with R.C. 3323.091, 3323.13, 3323.14, or 3323.141, regardless of who has custody of the child. R.C. 3313.64(C)(1). Since the admission of a child who needs special education is not dependent upon the custody of the child, which is your main area of concern, the provisions governing tuition for special education are not discussed in this opinion. See R.C. Chapter 3323. Rather, the analysis set forth in this opinion applies to children who do not receive special education.

When a child is in the legal custody of a person other than his natural or adoptive parent, tuition is, pursuant to R.C. 3313.64(C)(2)(a), paid by the district in which the child's parent resided when the court removed the child from his home or when the court vested legal custody in the person, whichever occurred first. If the parent's residence at such time is unknown, tuition is paid by the district in which the child resided at the time he was removed from his home or placed in legal custody, whichever occurred first. R.C. 3313.64(C)(2)(b). If a school district cannot be established under either of these provisions, then tuition is paid by the district determined by the court, pursuant to R.C. 2151.357, when the court vested custody of the child in the person. R.C. 3313.64(C)(2)(c).

If, when the court removed the child or vested legal custody in a person other than the parent, 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 Ohio, then the district with responsibility for paying tuition will be the district determined pursuant to R.C. 3313.65 as the district required to pay tuition while the parent was in such facility or placement. R.C. 3313.64(C)(2)(d). That district is determined on the basis of the residence of the institutionalized or incarcerated parent at the time the parent became subject to the jurisdiction of the juvenile court, at the time the sentence was imposed, at the time the parent was admitted to the residential facility, or as determined by the Superintendent of Public Instruction. R.C. 3313.65(D). It is assumed that your question does not involve a factual situation that comes within R.C. 3313.64(C)(2)(d), and that provision is not discussed further in this opinion.

A determination of which school district is to pay tuition pursuant to R.C. 3313.64(C)(2)(a)-(c) does not depend upon the current residence of the parents. Even if a child's parents both currently reside outside Ohio, the determination made under R.C. 3313.64(C)(2)(a)-(c) places responsibility for paying tuition first upon the district in which the parent resided when the court removed the child from his home or when the court vested legal custody in a person other than the parent, next upon the district in which the child resided at the time he was removed from his home or placed in legal custody, and finally upon the district determined by the court pursuant to R.C. 2151.357 at the time the court vested custody of the child in a government agency or person other than his parent.

If neither parent resided in Ohio when the court removed the child from his home or vested legal custody in a person other than the parent, then responsibility for tuition cannot be fixed pursuant to R.C. 3313.64(C)(2)(a). If the parent's residence at the time of removal or placement in custody is known and is known to be outside the State of Ohio, then responsibility for tuition cannot be fixed pursuant to R.C. 3313.64(C)(2)(b). If responsibility for tuition cannot be fixed pursuant to R.C. 3313.64(C)(2)(a) or (b), then a court fixes it pursuant to R.C. 2151.357, as prescribed by R.C. 3313.64(C)(2). See generally 1980 Op. Att'y Gen. No. 80-095, at 2-372 (finding, under earlier provisions, that "if the parents' residence is out of state and

another person or a government agency has been granted legal or permanent custody, then the result would be as ... in a case in which the custody of the child is established by a court"). In a situation in which there has been no court action removing a child or establishing the child's custody so that no district can be found liable for tuition under R.C. 3313.64(C)(2)(a)-(c), no statute provides for the payment of tuition. It follows in that situation that the district that has admitted the child pursuant to R.C. 3313.64(B)(2)(a) must bear the cost of educating the child. *See* note 3, *supra*.

R.C. 3313.64(C)(3) governs the payment of tuition if a child is not in the permanent or legal custody of a government agency or person other than his parent and resides in a home.⁶ In those circumstances, tuition is paid by the school district in which the child's parent resides, R.C. 3313.64(C)(3)(a), or, if the parent is not a resident of Ohio, the home in which the child resides, R.C. 3313.64(C)(3)(b). This provision is not directly applicable to your question, since it applies when the child is *not* in the permanent or legal custody of a government agency or person other than his parent.

The facts outlined in your second question -- that the child is in the legal custody of a resident of Ohio other than the child's parent and the parents reside outside Ohio -- do not indicate when or how the custody of the child was changed from the parents to another person. If an Ohio court removed the child from his home or vested legal or permanent custody of the child in a person or government agency other than the parent, then the school district that is responsible for paying tuition can be determined under R.C. 3313.64(C)(2). If, however, the transfer of custody was made without a court order or by a court of a different state, then the provisions of R.C. Chapter 3313 do not provide for payment of tuition by any district or person other than the district in which the child resides with his custodian. *See generally* R.C. 3109.21-.37. The question of possible reimbursement of school tuition in such circumstances is not addressed directly by the statutory scheme governing the payment of school tuition and will depend upon the facts and liabilities established in each case. An examination of that myriad of possibilities exceeds the scope of this opinion. It does, however, appear that a school district may seek reimbursement from an out-of-state source pursuant to any contracts or other legal arrangements that may exist.

In this regard, it should be noted that R.C. 2151.39 prohibits a public or private person or agency of another state from placing a child in a family home or with an agency or institution in Ohio for temporary or permanent care or custody, or for adoption, without furnishing the Department of Human Services with relevant information, including a medical and social history

⁶ "Home" is defined in R.C. 3313.64(A)(4) as follows:

Except as used in division (C)(2) of this section, "home" means a home, institution, family 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.

of the child, information about the situation into which the child will be placed, and "any other information or financial guaranty required by the department to determine whether the proposed placement will meet the needs of the child." R.C. 2151.39 also requires that all placements made in Ohio by a party located in a state that is a party to the Interstate Compact on the Placement of Children be made in accordance with R.C. 5103.20-.28.

R.C. 5103.20 sets forth the provisions of the Interstate Compact on the Placement of Children, and R.C. 5103.21-.28 contain provisions relating to the Compact. The Compact applies to the placement of a child in foster care or as a preliminary to a possible adoption. It includes placement in a family free or boarding home or child care agency or institution, but it does not apply to the "sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or non-agency guardian in the receiving state." R.C. 5103.20 (Art. VIII(A)). Article V of the Compact states, in part:

(A) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or its transfer to another location and custody pursuant to law. *The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement.* (Emphasis added.)

See also R.C. 5103.21; R.C. 5103.24 (officers and agencies of Ohio and its subdivisions are authorized to enter into contracts for the performance of services on behalf of other states that are parties to the Compact; an agreement that contains a financial commitment or imposes a financial obligation on Ohio or on a subdivision must be approved by, respectively, the Director of Budget and Management or the chief local fiscal officer).

It is not clear whether payment of public school tuition is part of the financial responsibility of the sending agency when, as in the situation presented, the child is in the legal custody of a resident of the state and state law makes no provision for collecting tuition from any source other than an Ohio school district. Compare R.C. 3313.64(C)(3) (payment of tuition when a child resides in a home and is not in the permanent or legal custody of a government agency or person other than his parent). See generally 1989 Op. Att'y Gen. No. 89-092 (syllabus) ("[w]here the children services board, retaining legal custody of the child, places the child to live with a relative in another state which is a party to the Interstate Compact on the Placement of Children, R.C. 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"); 1989 Op. Att'y Gen. No. 89-006; 1965 Op. Att'y Gen. No. 65-16.

Arrangements for Payment of Tuition

Your third question concerns a situation in which the child is in the legal custody of a county resident and the child's parents reside out of state. See note 4, *supra*. You ask whether the child must be admitted without satisfactory arrangements for the payment of tuition.⁷

⁷ This opinion addresses the payment of tuition only in circumstances in which a child is entitled to be admitted to school pursuant to R.C. 3313.64(B)(2)(a) because the child is in the

As discussed above, when the child is in the legal custody of a person other than his parent and the parents reside outside Ohio, the payment of tuition is governed by R.C. 3313.64(C)(2)(a)-(d). Those provisions require that tuition be paid by the appropriate school district. When tuition for a child who does not receive special education must be paid by a school district, payment of that tuition is assured by the provisions of R.C. 3313.64(I), as follows:

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 (G) 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 (G) 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 (G) 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 [of public instruction], pursuant to division (G) 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. (Emphasis added.)

Pursuant to R.C. 3313.64(I), tuition payments due from one school district to another are calculated along with state aid due to the districts under R.C. 3317.023, and payments of state aid reflect deductions and credits for such tuition payments. It is, therefore, unnecessary for one school district to bill another district directly for tuition payments under R.C. 3313.64(C)(2) or (3). Any concerns or controversies with respect to such payments should be addressed to the Superintendent of Public Instruction. See R.C. 3313.64(I), 3317.023; see also R.C. 3317.08.

Your letter notes that a child who does not reside in the district where his parent resides must be admitted to the schools of the district in which the child resides if the child resides in

legal or permanent custody of a government agency or person other than his natural or adoptive parent. This opinion does not address the payment of tuition for a child who is voluntarily admitted by a school district, see R.C. 3317.08, or a child who is admitted pursuant to a contract between school districts, see R.C. 3327.04, .06. Further, except as discussed above in general terms, this opinion does not address the possible reimbursement of tuition expenses from an out-of-state source pursuant to contract or other legal arrangement when a child is in the legal custody of a person other than his parent and his parents live outside Ohio.

a home. *See* notes 5 and 6, *supra*. When a child who resides in a home receives special education, tuition is, pursuant to R.C. 3313.64(C)(1), paid in accordance with R.C. 3323.091, 3323.13, 3323.14, or 3323.141. When a child who resides in a home is in the permanent or legal custody of a government agency or person other than his natural or adoptive parent and does not receive special education, tuition is paid by the appropriate school district as determined in accordance with R.C. 3313.64(C)(2)(a)-(d). When a child who resides in a home is not in the permanent or legal custody of a government agency or person other than his parent and does not receive special education, tuition is paid either by the school district in which the child's parent resides or, if the parents reside outside Ohio, by the home in which the child resides. R.C. 3313.64(C)(3)(a), (b). If the home must pay tuition, that tuition is computed in accordance with R.C. 3317.081. R.C. 3313.64(D). The statute contains the following provisions for recovery of tuition that is due from a home:

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 his designee's time spent preparing and presenting the case, shall be deposited in the county or city general fund.

R.C. 3313.64(D).

Your letter goes on to suggest that the fact that provision is made for recovery of tuition from a home in a civil action suggests that the mandate of admission to the public schools pursuant to R.C. 3313.64(B) is not dependent on whether the school district actually receives the tuition, and that appears to be the case. *See also* R.C. 3321.01-.04 (compulsory school attendance); R.C. 3321.02 ("[e]very child actually resident in the state shall be amenable to the laws relating to compulsory education, and neither he nor the person in charge of him shall be excused from the operation of said sections or the penalties under them on the ground ... that the parent of the child is a resident of another state"). With respect to the admission under R.C. 3313.64(B)(2)(a) of a child who is in the legal or permanent custody of a government agency or person other than his natural or adoptive parent, the entity with responsibility for payment of tuition is, pursuant to R.C. 3313.64(C), always a school district. As noted above, the payment of tuition by a school district is calculated as part of the state aid program, in accordance with R.C. 3313.64(I) and 3317.023, so that the payment of tuition in those circumstances is assured.

Conclusion

It is, therefore, my opinion, and you are advised as follows:

1. Pursuant to R.C. 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.
2. For purposes of R.C. 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 R.C. 5103.15 or 5103.16.

3. An individual who is appointed guardian of the person of a minor, pursuant to R.C. Chapter 2111, has legal custody of the minor for purposes of R.C. 3313.64. (1983 Op. Att'y Gen. No. 83-041, syllabus, paragraph 3, approved and followed.)
4. When a child who does not receive special education is admitted to school pursuant to R.C. 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 R.C. 3313.64(C)(2)(d) does not apply, then tuition is paid by the school district determined pursuant to R.C. 3313.64(C)(2)(a)-(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 R.C. 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.
5. 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 R.C. 3313.64(I) and 3317.023, calculated as part of the state aid program, so that the payment of tuition is assured.