



Educating adult students and emancipated minors

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This fact sheet is designed to address the issues of residence, attendance and tuition, and the rights of adult students and emancipated minors, which often present unique issues for Ohio's public schools. Because these students are no longer subject to parental control, their rights and responsibilities can be difficult to determine.

Adult students

Who is an adult student?

The age of majority in Ohio is 18 (Ohio Revised Code Section (RC) 3109.01). Once a student reaches the age of 18, he or she is an adult in the eyes of the law. Most custody orders automatically cease when the child reaches the age of majority. Adult students acquire the right to consent to the release of their school records, sign their own permission slips and write excuses for their own absences.

Must an adult student be admitted to school tuition-free?

Adult students who reside with their parents and have not completed the high school curriculum or individualized education program (IEP) are entitled to attend school tuition-free in the district where their parents reside until they reach age 22. Adult students who do not reside with their parents, who support themselves by their own labor and who have not completed the high school curriculum or an IEP are entitled to attend school tuition-free in the school district in which they reside (RC 3313.64(F)(1)).

The law says that students who are 18 may attend school tuition-free in the district where they reside if they are "supporting themselves by their own labor." What does this mean?

This term is not defined in the Revised Code. The Ohio attorney general has issued an opinion that the phrase "support themselves by their own labor" refers to "providing one's own necessities of life such as food, shelter and clothing by means of one's own work" (2014 Ohio Atty. Gen. Ops. No. 2014-026). To fit this definition, a student may not be dependent on his or her parents or others for financing or furnishing the necessities of human existence. The opinion states that students may support themselves in a variety of ways, and such support is not limited to labor that is characterized by a particular manner of compensation. The student's labor, however, must be his or her means of self-sufficiency.

If a student is being supported by his or her parents, the parent's school district is the one that the child may attend (RC 3313.64(A)(1)). When an adult student is no longer supported by his or her parents, the student's arrangements for self-support probably entitles the student to attend school tuition-free in the district where he or she resides. This probably is so even if the adult student is residing with a friend or other relative (1974 Ohio Atty. Gen. Ops. No. 74-076). The Ohio attorney general stated that RC 3313.64 should be given a liberal interpretation to meet the statutory purpose of "... free attendance at an appropriate public school, available to every child of school age" (quoting from *Board of Education v. Dille*, 109 Ohio App. 344 (1959)).

Decisions regarding attendance based on whether a student is self-supporting

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or whether he or she has a guardian that has assumed a role *in loco parentis* (“in the place of the parent”) must be decided on a case-by-case basis.

What are the rules on student records of adult students?

Ohio law and the Family Educational Rights and Privacy Act (FERPA) provide that when a student reaches age 18, the student acquires the right to consent to the release of personally identifiable information contained in his or her education records. The rights of parents under FERPA transfer to the adult student, except that parents of dependent students, as defined in the Internal Revenue Code, may view the educational records of the student without his or her consent (34 CFR 99.31(a)(8)).

May a school district withdraw from school an adult student who does not attend regularly, or who attends but does not participate in classes?

No. The right to withdraw from school is a right that belongs to the student, and to the parents if a child is under 18. The compulsory school age is between the ages of 6 and 18 (RC 3321.01). Accordingly, an adult student no longer is compelled to attend school. Consequently, these students may no longer be referred to juvenile court for juvenile truancy charges for failure to attend school.

RC 3313.64 states that students are entitled to attend school until they reach age 22 and/or complete the high school curriculum or their IEP. Keep in mind that administrators may apply the same attendance and discipline code to adult students applied to all other students in school. It also is permissible to have a separate policy specifically addressing adult students and their responsibilities.

Are there any other options for adult students who are disrupting the educational process for younger students?

Yes. Pursuant to RC 3319.01, the superintendent of schools has the authority to direct and assign pupils to the appropriate school and grade. A superintendent may assign an adult student to an alternative school or program that is more appropriate for the student than the general classroom. A disciplinary transfer, rather than an academic placement, should be accompanied by some level of due process. A case-by-case determination should be made regarding adult student assignments.

Emancipated minors

Who or what is an emancipated minor?

Emancipated minors are students under the age of 18 who are independent from their parents or other legal guardian. The concept of emancipation in the law literally means that a parent has released his or her claim to the services and earnings of the minor child. Practically speaking, it means that a minor is no longer under the physical custody and control of his or her parents, and the child is responsible for his or her own support. It is presumed that a minor who resides with his or her parents is not emancipated.

Is there an emancipation proceeding in court, form or affidavit that indicates emancipation of a minor?

Generally, no. Emancipation of a minor is a common law doctrine. Emancipation may occur by an event or be inferred from a student’s circumstances. For example, minors may become emancipated through marriage or by enlisting in the military. Additionally, if a parent allows a child to move out, become employed and support him or herself, emancipation may occur by inference.

There is a legal proceeding concerning settlement of a claim for injury by an emancipated minor wherein the probate court approves emancipation of the minor and settlement of the claim (RC 2111.181). That procedure is unrelated to school attendance and tuition, and is not used in this context.

What about minor students who are married?

The marriage of a minor supersedes the relationship of parent and child. A married student’s services and earnings are for the new family. Minors who are married are emancipated from their parents. If the spouse of the minor is an adult, the spouse may sign releases, write notes for the absence of the minor and sign any other required documentation.

What if both the married student and spouse are minors?

In that case, it appears that both minors are emancipated from their parents. However, because neither is an adult, there are potential problems with the ability to sign permission slips and release forms since minors are legally incapable of consent. In these cases, the school district may need to consult with legal counsel. The signatures of the parents or appointment of a guardian ad litem in probate court, who has the capacity to consent on behalf of the minor and sign required forms, may be necessary in some situations.

A 17-year-old student's parents kicked him out of the house. Is he emancipated?

The act of the parents is important to a determination about emancipation. In this case, the parents have manifested their apparent intention to release their claim upon the child's services or earnings. A child who runs away from home is not emancipated, unless a court finds otherwise. This is because it is the parents who have the right to release their claim upon the child's services and earnings. The Interstate Compact for Juveniles (RC 2151.56) provides that a child who has absconded, escaped or run away may be returned across state lines to his or her parents or guardians.

A 17-year-old student is in the custody of someone other than his or her parents. Is the child emancipated?

Not necessarily. When a child is in the custody of someone else, that person is acting in place of the parent. The guardian or custodian is the person who has a claim to the services and earnings of the child, and if he or she released those rights, the child would be emancipated if no other custodian was named (1974 Ohio Atty. Gen. Ops. No. 74-076).

To whom should permission slips and release forms for emancipated minors be sent?

Release forms for emancipated minors should be mailed to parents or other legal custodians because minors do not have the capacity to contract, and any contract an emancipated minor executes is void or voidable. Parents do not relinquish all rights to a child upon emancipation. Emancipation deals only with the right to services and earnings. Therefore, emergency medical authorizations, release forms and other kinds of permission slips still should be mailed to parents if there is no spouse or guardian who has the capacity to sign for the child. In situations in which this is not appropriate and there is no other legal guardian who has the capacity to sign, the school may need to seek required consent from a court-appointed guardian ad litem. Contact board counsel if you encounter such a situation.

Are the parents of an emancipated minor entitled to view school records concerning their child, even if the child objects?

Yes. In the absence of a court order to the contrary, parents are entitled to view the student's school record. Again, the parent has released their claim only to the child's earnings and services, but other parental rights continue. Once the emancipated minor becomes an adult, the answer to this question may be different.

The information in this factsheet is designed to provide authoritative general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.