

# FACT SHEET



## Grandparents and Other Relatives Raising Children: Access to Education

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### INTRODUCTION

Over the last 25 years, the number of children being raised by someone other than a parent has increased dramatically in the United States, with the vast majority of these children being raised by their grandparents. 2.5 million grandparent-headed families with or without parents in the home care for over 3.9 million children. (1998, U.S. Bureau of the Census).

Many factors account for this increase, including drug and alcohol abuse, death of a parent, child abuse and/or neglect, teenage pregnancy, HIV/AIDS, incarceration, and divorce. When parents have been unable or unwilling to care for their children, grandparents have stepped in as a safety net to keep these families together.

Public policies and programs in many areas of the country have not kept pace with the increase in the number of these families and these families' diverse needs for supports. The needs include assistance (1) accessing educational enrollment; (2) obtaining necessary immunizations to enroll the children; (3) obtaining special education services; and (4) accessing parental activities. Schools can also reach out to these caregivers by (5) offering support groups at their facilities.

Many of these caregivers are raising children informally without a legal relationship, such as legal custody or guardianship, and consequently can have greater difficulty accessing educational services than caregivers with a legal relationship. Relative caregivers who raise children informally do so because, although most caregivers sense that the arrangement is permanent, they hope that the children will be raised by the parent at some point in the future. For these caregivers to establish a legal relationship with the children they raise, they must bring a legal proceeding against the parents, one of whom is their relative. These proceedings are usually lengthy and emotionally difficult for everyone involved.

### (1) EDUCATIONAL ENROLLMENT

Many states do not require a caregiver to have legal custody or guardianship to enroll a child in school, but do have residency requirements that require children to be in the school district for a "legitimate" purpose, i.e., not solely to attend school. Some local school districts in turn require caregivers to show documentation of legal custody or guardianship in order to enroll the children. The districts require this proof to prevent families from abusing the system by shopping for a particular school and having their children live in that district during the school week or school year solely in order to attend that school. However, the problem with requiring proof of legal custody or guardianship is that, in addition to preventing abuses, it unjustly prevents children who are

being raised informally by relative caregivers from attending school.

Some states have developed ways to balance the concerns of school systems and families:

#### ◆ California (CA Family Code at sections 6550 and 6552):

- California has had an educational and medical consent law since 1994.
- It allows relative caregivers without legal custody or guardianship of a child to submit an affidavit to enroll the child in school and to consent to medical treatment on his or her behalf.
- An important aspect of this law is that the signatures of the child's parents are not required on the affidavit, which is crucial in those instances where the parents cannot be found.
- The law includes the form for the affidavit at section 6552.
- This form includes a note to school officials, which addresses the concern that some individuals could abuse this law to shop for schools.
- California school districts have no reporting requirements under this consent law, so statistics regarding its success are unavailable.
- Anecdotally, the law is working well for children, caregivers, and school districts.
- Other states that also have educational consent laws include *North Carolina* (NC Code at section 115C-366) and *Delaware* (DE Code at Title 14, section 202(e)&(f)).
- Legislation is pending in fall 1999 in *New York* (bill number A07052) to enact such a law.

#### ◆ Another approach is used in Indiana (IN Code 20-8.1-6.1-1):

- Indiana has had a law for several years that the "legal settlement" of a student being supported, cared for and living with another person is the school attendance area of that person.
- Local school districts cannot require guardianship or legal custody unless facts are in dispute and the school district believes that (1) the child is living with another person primarily in order to attend a particular school and (2) the students' parents are able to support the student.
- If the facts are disputed and the school therefore requires guardianship or legal custody, the child may be enrolled on the day that papers are filed with the court to obtain guardianship or legal custody.

#### ◆ A third approach is used in Illinois:

- The Illinois Department on Aging has "tip sheets" for relative caregivers, including one about how to enroll children in school.
- The caregivers can take these sheets with them when enrolling the

kids and thereby educate any local school administrators who may not know the requirements.

- The sheet cites a statement from the Illinois State Board of Education:

Illinois law does not provide any specific requirements for proving residence. It is a question of fact whether a child is actually "in" the district and not in his or her parents' custody or control. A district cannot require legal guardianship. Some districts request, but cannot require, written confirmation from the parent or legal guardian that the child is in the actual custody and control of a non-parent or non-guardian. Districts may request, but not require a statement or affidavit from the non-parent or non-guardian.

## (2) NECESSARY IMMUNIZATIONS

- The *California* consent law is unique in that it combines the authority to enroll children in school with the authority to consent to medical treatment.
- Other states have separate medical consent laws, which allow the relative caregiver to consent to immunizations that are necessary to enroll the child in school, in addition to the authority to consent to other medical treatments.
- These laws are generally similar to the educational consent laws in that an affidavit is necessary. Some, however, do not require anything in writing to convey the authority to consent to the caregivers.
- States that have some form of medical consent law include:
  - *Delaware* (DE Code at Title 13, section 707);
  - *District of Columbia* (DC Code at section 16-4901);
  - *Florida* (FL Domestic Relations Code at section 743.0645);
  - *Indiana* (IN Code at section 16-36-1-5);
  - *Kansas* (immunization authorization only at KS Code, Chapter 38, section 136);
  - *Mississippi* (MS Code at section 41-41-3); and
  - *Texas* (TX Family Code at section 32.001 and 32.101).
- Other states in which legislation is pending in fall 1999 to enact a medical consent laws include:
  - *New York* (bill number A07052, same as the educational consent legislation cited above); and
  - *Pennsylvania* (bill number SB 405).

## (3) SPECIAL EDUCATION SERVICES

- According to federal law, schools should be including relative caregivers in the process of developing Individual Education Plans (IEPs) for children with disabilities.
- The Individuals with Disabilities Education Act (IDEA) is the primary source of federal money for special education services, and the US Department of Education regulations implementing the IDEA define "parent" to include relative caregivers.
- The definition of "parent" is found in Title 34 of the Code of Federal Regulations (CFR) at section 300.20(a):

The term parent means -- . . . (3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child

lives, or a person who is legally responsible for the child's welfare) . . .

## (4) PARENTAL ACTIVITIES

- According to federal law, schools should be including relative caregivers in parental activities.
- Title I of the federal Elementary and Secondary Education Act (ESEA) provides funds to schools to offer "parental activities," and the ESEA defines "parent" at Title 20 of the US Code at section 8801(22) to include relative caregivers:

"parent" includes a legal guardian or other person standing in loco parentis.

- The *Ohio* Department of Education is developing a manual for grandparents and Title I coordinators in order to ease grandparents' inclusion in parental activities and to involve them in their grandchildren's education.

## (5) CAREGIVER SUPPORT GROUPS

- Support groups for relative caregivers provide a useful forum for caregivers to share problems, joys, and information about resources.
- Schools can contribute their facilities, provide notices about meetings, have teachers, counselors and administrators speak to the group about educational services, and offer these groups as resources.
- Generations United (GU) is piloting a behavioral health model for these families in four mental health centers around the country. GU has a contract with the Center for Mental Health Services of the US Department of Health and Human Services and is working with the Brookdale Foundation to replicate its Relatives as Parents Program (RAPP) in these sites.
- One of the sites, Mid-Erie Counseling and Treatment Services is physically located in three public schools in the *Buffalo, New York* area and is offering support groups and counseling services to the relative caregivers. Mid-Erie works with the schools to reach out to the families and offer the services on school grounds.

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For further information, please contact: Generations United, 440 First St., NW, Suite 480, Washington, DC 20001, (202) 662-4283, Fax: (202) 638-7555. The GU web site at [www.gu.org](http://www.gu.org) contains additional information about grandparents and other relatives raising children.

*Generations United (GU) is the premier national nonprofit membership organization focused solely on promoting intergenerational public policies and programs. GU was founded more than 13 years ago by the Child Welfare League of America, the National Council on the Aging, the Children's Defense Fund and AARP and now includes over 100 national, state and local organizations representing more than 70 million Americans.*

