CUSTODY AFFIDAVITS AND SCHOOL ENROLLMENT

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FOR LOUISIANA APPLESEED

Introduction

The Louisiana Department of Education’s philosophy is built on the premise that all children can reach high achievement and those closest to children – parents and teachers – know how to help them. We are committed to providing clear, concise information to help families and teachers make informed decisions. There are numerous mechanisms to ensure that students are able to enroll in public schools across our state. One of these tools, in particular, is the ability for non-parents to enroll students by affidavit rather than obtaining a court order, which can sometimes be an expensive and lengthy process. There are two types of valid affidavits that non-parents can use to enroll children in school.¹
Affidavits and School Enrollment

I. Provisional Custody Affidavits

A non-parent custodian who presents a properly executed Provisional Custody affidavit (sometimes called a “Custody by Mandate affidavit”) is not and should not be required to present a court order to establish custody or residency for the purpose of enrolling a student in a Louisiana public school. Our state legislature expressly created these affidavits to have the same legal effect as a court order. The Louisiana Department of Education has the responsibility of providing guidance and oversight to ensure local education agencies adhere to all state and federal laws including the use of valid Provisional Custody affidavits. Public schools should honor such affidavits pursuant to Louisiana statutory law.

Provisional Custody affidavits are valid if they are signed by the appropriate parties as well as a notary and appear to transfer custody of a child to the adult attempting to enroll that student. A validly executed affidavit gives the named adult (sometimes called a “mandatory,” “mandate” or “provisional custodian”) custody over the child and responsibility for that child’s health, welfare, and education for a period up to one year.

II. Non-Legal Custodian Affidavits

Districts and school personnel should also accept Non-legal Custodian affidavits (sometimes called “Section 9:975” affidavits) for enrollment purposes. These affidavits give any adult, non-parent custodian living with a child the power to give legal consent for that child to receive any medical or educational services for which parental consent is usually required.

Like Provisional Custody affidavits, a court order is unnecessary when these affidavits are presented for enrollment, and a court order should not be required for enrollment in a public school.

III. Key Facts About Provisional Custody Affidavits

A. When is a Provisional Custody affidavit valid?

Provisional Custody affidavits are valid if they are signed by the appropriate parties as well as a notary and appear to transfer custody of the child to the adult trying to enroll the student. They are valid for one year from the date of the affidavit’s execution.
B.) Who may sign a Provisional Custody affidavit?
- Married parents acting jointly, or
- If parents are divorced, the natural tutor, tutrix, or co-tutors acting jointly, or
- A grandparent awarded custody of a child, or
- Any person who could qualify as a natural tutor, tutrix, or co-tutor even if he does not have a court order appointing him as such.

C.) What if the school district operates under a federal desegregation or consent decree?
A school district should accept Provisional Custody affidavits for purposes of enrollment unless it operates under a desegregation or consent decree that expressly prohibits enrollment by Provisional Custody affidavits. Both desegregation and consent decrees must expressly contain very specific limitations on the means of enrolling students before they could create a legal barrier to enrolling a student with a Provisional Custody affidavit. The presence of such language in a decree is highly unlikely.

School districts should not rely upon the existence of unrelated desegregation or consent decrees to refuse enrollment with a Provisional Custody affidavit.

D.) What does a Provisional Custody affidavit look like?
The Louisiana Legislature has provided a suggested form for Provisional Custody affidavits. The content of the affidavit, however, may vary as long as it contains the information outlined above.

IV. KEY FACTS ABOUT NON-LEGAL CUSTODIAN AFFIDAVITS
A.) When is a Non-legal Custodian affidavit valid?
A Non-legal Custodian affidavit is valid when it is signed and dated by an appropriate non-parent living with the child in question and the affidavit “substantially contains” the information outlined by the Louisiana Legislature. The affidavit is effective for one year from the date of signing.

B.) Who may sign a Non-legal Custodian affidavit?
An adult non-parent custodian living with the child who is not a foster parent may sign this affidavit. The law states that an adult’s representation that he meets these criteria should be accepted on its face and that school officials have no obligation to make further inquiry or investigation. The statute creating these affidavits protects school officials relying upon these affidavits from being sued.
C.) What authority does a Non-legal Custodian affidavit provide?

The adult non-parent custodian signing the affidavit may authorize the child to receive any medical or educational services for which parental consent is usually required. An adult signing an otherwise valid Non-legal Custodian affidavit may enroll the student in question.

D.) What if the school district operates under a federal desegregation or consent decree?

Schools should accept these affidavits unless such affidavits are specifically prohibited in an applicable desegregation or consent decree. Both desegregation and consent decrees must expressly contain very specific limitations on the means of enrolling students before they can create a barrier to enrolling a student by way of a Non-legal Custodian affidavit. The presence of such language in a decree or order is highly unlikely.

E.) What does a Non-legal Custodian affidavit look like?

The state legislature has furnished an example, stating that all valid affidavits must substantially contain the same language.

Conclusion

Training all district personnel to recognize and accept these affidavits – rather than improperly insist on a court order – is crucial to ensuring adherence to Louisiana statutes.

Questions?

The Office of Student Programs at the Louisiana Department of Education is available to provide technical assistance, support, and guidance on affidavits and school enrollment. For further information, please contact:

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SAMPLE PROVISIONAL CUSTODY BY MANDATE

STATE OF LOUISIANA
PARISH OF ____________________________

BE IT KNOWN THAT on this ___________day of ____________, 20___, before me, the undersigned notary, and in the presence of the competent witnesses herein after named and undersigned:

Personally came and appeared:

____________________________________________________________________
(affiant’s name, marital status, mailing address),
who is the (parent(s), or, in the event of divorce, separation, or illegitimacy, the natural (co) tutor or tutrix) of

____________________________________________________________________
(minor child(ren))
who, by these presents make, name, constitute, and appoint,

____________________________________________________________________
(agent’s name and mailing address)
and grant provisional custody of the above named child(ren), to provide for the health, education and welfare of the child as provided by the law on Provisional Custody by Mandate, specifically including the authority to:

INITIAL ALL APPLICABLE PROVISIONS:

____(1) Consent to and authorize such medical care, treatment, or surgery as may be deemed necessary for the health, safety, and welfare of the child.

____(2) Enroll the child in such schools or educational institutions as may be deemed necessary for his due and proper education.

____(3) Discipline the child in such reasonable manner as may be necessary for his proper rearing, supervision, and training.

____(4) Do and perform all other such acts as may be necessary for the shelter, support, and general welfare of the child.
This Provisional Custody by Mandate will continue to be effective until______, 20_, or one year from date hereof, which ever period is shorter.

I agree that any third party who receives a copy of this document may rely upon the authority granted the agent as indicated herein and may act in reliance on such authority. Revocation or termination by operation of law is not effective as to a third party until he has actual knowledge thereof. I agree to indemnify and hold harmless the third party for any claims that arise against him because of reliance on this Provisional Custody by Mandate.

The undersigned agent does hereby accept the provisional custody of the children named herein.

THUS DONE AND PASSED at ______________________, state of ______, in the presence of _______________________ and _______________________, competent witnesses, who sign these presents with the appearers and me, notary, after due reading of the whole.

WITNESSES:

__________________________________   ______________________________
(Parent, Tutor, or Tutrix)

__________________________________   ______________________________
(Other parent or Co tutor)

__________________________________   ______________________________
(Agent)

__________________________________
NOTARY PUBLIC
ONLINE RESOURCES

Please visit these online resources for a sample affidavit or for more information:

○ www.lsba.org/goto/CustodybyMandateAffidavit

○ www.lsba.org/ATJ

○ louisiana.appleseednetwork.org/

Footnotes

1.) Information provided by the Louisiana Department of Education.


3.) La. R.S. § 9:954.

4.) La. R.S. § 9:952(A) and § 9:954.

5.) La. R.S. § 9:975.


7.) La. R.S. § 9:952(A) and § 9:954.


9.) La. R.S. § 9:975(A) and (B).

10.) La. R.S. § 9:975(B)(1) and (2).
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