

**Are there other ways in which emancipation of a minor may occur?**

Yes. Emancipation may occur by an event or be inferred from the student's circumstances. Examples of emancipation that occur by an event are the marriage of a minor or a minor enlisting in the military. A minor also may become emancipated by a parent's written or oral consent. Emancipation may occur by inference; for example, if a parent allows his or her child to move out and support him or herself. Factors that may be useful to consider in determining whether a child is emancipated include leaving home, entering the armed forces, marriage, becoming employed, and being self-supporting.

**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, but because neither is an adult, there are potential problems with the ability to sign permission slips and release forms. 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 sign required forms may be necessary in some situations.

**A 17-year-old student told me his 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 on Juveniles 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 loco parentis*. 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 (1974 Ohio Atty. Gen. Ops. 076).

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

Minors do not have the capacity to contract; contracts they execute are void or voidable. For this reason, release forms still should be mailed to parents or other legal custodians. Parents do not relinquish all rights to a child upon emancipation; emancipation deals only with the right to services and earnings. So emergency medical authorizations, release forms of other kinds and permission slips

should still 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 an appointed guardian *ad litem*. Contact board counsel if you encounter such a situation.

**Are parents of emancipated minors entitled to view school records concerning their children, even if the child objects?**

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

*OSBA attorneys are available to help member callers sort out the legal requirements concerning adult students and emancipated minors. Consulting board counsel in specific situations is recommended.*

*The information in this pamphlet 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.*

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*What schools need to know about:*

**Adult students and Emancipated minors**



Issues of residence, attendance and tuition, and rights of emancipated minors and adult students often present unique problems for Ohio's public schools. Because these types of students are no longer subject to parental control, their rights and responsibilities can be difficult to determine. This brochure is designed to assist school officials with answering some of the more commonly asked questions concerning adult students, emancipated minors and public schools.

## Adult students

### Who is an adult student?

The age of majority in Ohio is 18 years of age (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. Adult students acquire the right to consent to release of their school records, sign their own permission slips and write excuses for their own absence. Most custody orders automatically cease upon the child reaching the age of majority.

### 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 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, but it appears to refer to whether the adult student still is dependent upon his or her parents. If the 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 entitle 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. 076). The 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)).

Like determinations of residence, decisions about whether a student is entitled to tuition-free attendance in a school district, based on whether he or she is self-supporting or whether his or her guardian has assumed a role *in loco parentis*, ("in the place of the parent") must be decided on a case-by-case basis.

### What about student records for adult students?

Ohio law and the Federal Education Rights and Privacy Act (FERPA) provide that when a student reaches the age of 18, the student acquires the right to consent to release of his or her education records.

Release of personally identifiable information to any other person or entity must be with the consent of the adult student. 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 parents if a child is under 18. The compulsory school age is between the ages of six and 18 (RC 3321.01), so that an adult student is no longer compelled to attend school. Of course, they 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 the age of 22 and/or complete the high school curriculum or their IEP. However, administrators may apply the attendance and discipline code to adult students, as to all other students in school. School rules apply equally to adult students. It also would be permissible to have a separate policy concerning 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. It appears that a superintendent could assign

an adult student to an alternative school or program that is more appropriate than the general classroom. An important consideration is that a disciplinary transfer should be accompanied by some level of due process. A case-by-case, rather than a "one-size-fits-all," determination should be made regarding adult student assignments. For most students, becoming an adult will make little difference to the completion of their high school curriculum.

## 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 their claim to the services and earnings of their 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. In the case of a married student, the spouse of the minor has become responsible. A minor who resides with his or her parents is presumed not emancipated.

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

Generally, no. Emancipation of a minor is a common law doctrine. 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.