

**Renumbered 1/24/2018**

**53A-2-202 Guardianship for residency purposes by responsible adult -- Procedure to obtain -- Termination.**

- (1) For purposes of this part, "responsible adult" means a person 21 years of age or older who is a resident of this state and is willing and able to provide reasonably adequate food, clothing, shelter, and supervision for a minor child.
- (2) A local board of education may adopt a policy permitting it to designate a responsible adult residing in the school district as legal guardian of a child whose custodial parent or legal guardian does not reside within the state upon compliance with the following requirements:
  - (a) submission to the school district of a signed and notarized affidavit by the child's custodial parent or legal guardian stating that:
    - (i) the child's presence in the district is not for the primary purpose of attending the public schools;
    - (ii) the child's physical, mental, moral, or emotional health would best be served by a transfer of guardianship to the Utah resident;
    - (iii) the affiant is aware that designation of a guardian under this section is equivalent to a court-ordered guardianship under Section 75-5-206 and will suspend or terminate any existing parental or guardianship rights in the same manner as would occur under a court-ordered guardianship;
    - (iv) the affiant consents and submits to any such suspension or termination of parental or guardianship rights;
    - (v) the affiant consents and submits to the jurisdiction of the state district court in which the school district is located in any action relating to the guardianship or custody of the child in question;
    - (vi) the affiant designates a named responsible adult as agent, authorized to accept service on behalf of the affiant of any process, notice, or demand required or permitted to be served in connection with any action under Subsection (2)(a)(v); and
    - (vii) it is the affiant's intent that the child become a permanent resident of the state and reside with and be under the supervision of the named responsible adult;
  - (b) submission to the school district of a signed and notarized affidavit by the responsible adult stating that:
    - (i) the affiant is a resident of the school district and desires to become the guardian of the child;
    - (ii) the affiant consents and submits to the jurisdiction of the state district court in which the school district is located in any action relating to the guardianship or custody of the child in question;
    - (iii) the affiant will accept the responsibilities of guardianship for the duration, including the responsibility to provide adequate supervision, discipline, food, shelter, educational and emotional support, and medical care for the child if designated as the child's guardian; and
    - (iv) the affiant accepts the designation as agent under Subsection (2)(a)(vi);
  - (c) submission to the school district of a signed and notarized affidavit by the child stating that:
    - (i) the child desires to become a permanent resident of Utah and reside with and be responsible to the named responsible adult; and
    - (ii) the child will abide by all applicable rules of any public school which the child may attend after guardianship is awarded; and
  - (d) if the child's custodial parent or legal guardian cannot be found in order to execute the statement required under Subsection (2)(a), the responsible adult must submit an affidavit to that effect to the district. The district shall also submit a copy of the statement to the

Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103.

- (3) The district may require the responsible adult, in addition to the documents set forth in Subsection (2), to also submit any other documents which are relevant to the appointment of a guardian of a minor or which the district reasonably believes to be necessary in connection with a given application to substantiate any claim or assertion made in connection with the application for guardianship.
- (4) Upon receipt of the information and documentation required under Subsections (2) and (3), and a determination by the board that the information is accurate, that the requirements of this section have been met, and that the interests of the child would best be served by granting the requested guardianship, the school board or its authorized representative may designate the applicant as guardian of the child by issuing a designation of guardianship letter to the applicant.
- (5)
  - (a) If a local school board has adopted a policy permitting the board to designate a guardian under this section, a denial of an application for appointment of a guardian may be appealed to the district court in which the school district is located.
  - (b) The court shall uphold the decision of the board unless it finds, by clear and convincing evidence, that the board's decision was arbitrary and capricious.
  - (c) An applicant may, rather than appealing the board's decision under Subsection (5)(b), file an original Petition for Appointment of Guardian with the district court, which action shall proceed as if no decision had been made by the school board.
- (6) A responsible adult obtaining guardianship under this section has the same rights, authority, and responsibilities as a guardian appointed under Section 75-5-201.
- (7)
  - (a) The school district shall deliver the original documents filed with the school district, together with a copy of the designation of guardianship issued by the district, in person or by any form of mail requiring a signed receipt, to the clerk of the state district court in which the school district is located.
  - (b) The court may not charge the school district a fee for filing guardianship papers under this section.
- (8)
  - (a) The authority and responsibility of a custodial parent or legal guardian submitting an affidavit under this section may be restored by the district, and the guardianship obtained under this section terminated by the district:
    - (i) upon submission to the school district in which the guardianship was obtained of a signed and notarized statement by the person who consented to guardianship under Subsection (2) (a) requesting termination of the guardianship; or
    - (ii) by the person accepting guardianship under Subsection (2)(b) requesting the termination of the guardianship.
  - (b) If the school district determines that it would not be in the best interests of the child to terminate the guardianship, the district may refer the request for termination to the state district court in which the documents were filed under Subsection (5) for further action consistent with the interests of the child.
- (9) The school district shall retain copies of all documents required by this section until the child in question has reached the age of 18 unless directed to surrender the documents by a court of competent jurisdiction.
- (10)

- (a) Intentional submission to a school district of fraudulent or misleading information under this part is punishable under Section 76-8-504.
- (b) A school district which has reason to believe that a party has intentionally submitted false or misleading information under this part may, after notice and opportunity for the party to respond to the allegation:
  - (i) void any guardianship, authorization, or action which was based upon the false or misleading information; and
  - (ii) recover, from the party submitting the information, the full cost of any benefits received by the child on the basis of the false or misleading information, including tuition, fees, and other unpaid school charges, together with any related costs of recovery.
- (c) A student whose guardianship or enrollment has been terminated under this section may, upon payment of all applicable tuition and fees, continue in enrollment until the end of the school year unless excluded from attendance for cause.