



LOUISIANA

KINSHIP NAVIGATOR

Legal and Custodial
Information Guide 







Disclaimer

The Louisiana Kinship Navigation Guide is intended to educate kinship caregivers, professionals, advocates and the general public. The guide provides legal fact sheets, other information related to kinship issues, and educational materials for general informational purposes only. None of these materials should be construed as legal advice on any subject matter, nor are they intended to substitute for obtaining legal advice from an attorney in your jurisdiction. These materials may not reflect the most current legal developments or address facts specific to your situation. The Louisiana Kinship Navigation Guide disclaims all liability for actions you take or fail to take based on any content in this guide. The use of this guide does not create an attorney-client relationship between you and the authors or contributors.

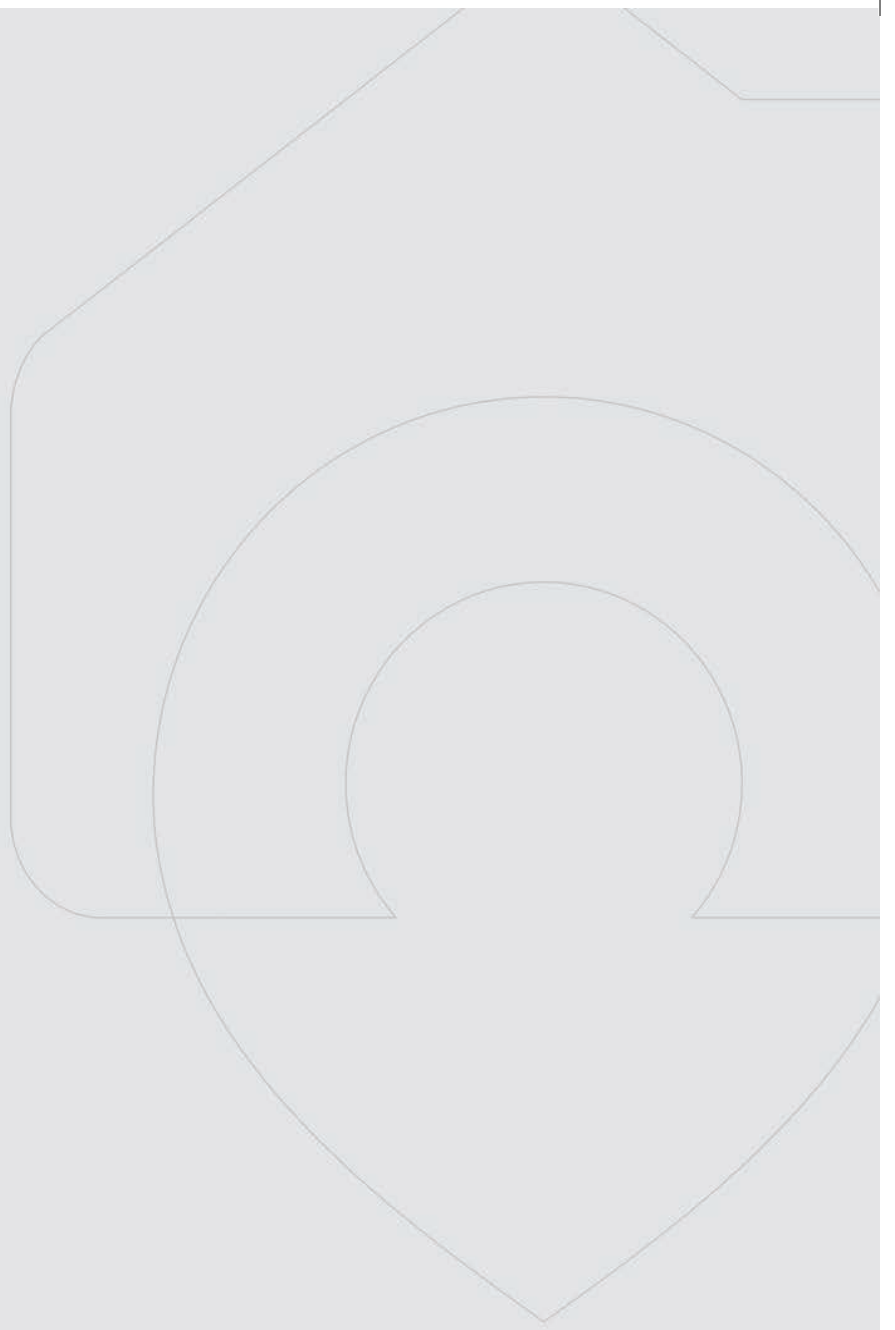




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Introduction

Kinship Care is the full-time care of children by relatives or others who have a kinship bond with a child and whose parents are not living in the home. You may be a grandparent, an aunt or uncle, sister or brother, tribal member or just a good family friend. Children receiving kinship care benefit by receiving care and affection from someone known to them and by having important attachments, family ties and relationships preserved.

As you raise these children you have your hands full and the last things you want to think about are legal issues and the legal system. However, you will probably have to deal with the legal system as you raise these children. You will most likely need legal papers in order to enroll the children in school, get them medical care or apply for benefits, etc. Above all, you may need legal papers to continue to keep the children safe.

Getting legal authority over the children can be a very complicated process. In some circumstances you may be able to obtain custody on your own but you may have to use the services of an attorney. The purpose of this guide is to provide Kinship Care Fact Sheets that may help you understand the process. It is not the purpose of the Kinship Care Fact Sheets to give legal advice, but, to educate you about the system. Only an attorney can give you legal advice. You must determine what the best route is for you and your family. No matter what, the decision on how to proceed is yours.

As you review the Fact Sheets, you will see that under certain circumstance it may be more important to have an attorney. Look for an attorney with experience in abuse and neglect law, custody and adoption. You should also ask if they know about programs that might assist your family such as Social Security or state subsidies and their fees. If you cannot afford to pay for an attorney, there are some resources that may be available to you included at www.dcf.la.gov and select **IAM/RelativeCaregiver**.





Legal Custody

General Information

If I have been caring for my grandchild in my home for several years with their parents' permission, do I have legal custody of the child?

No, you do not have legal custody. Even though the parent has agreed for the child to live with you, you do not have legal custody. You will need legal documents in order to have legal custody and make legal decisions for the child such as enrollment in school, medical decisions and financial decisions. However, if you are caring for a child, you have a legal responsibility to keep the child safe and provide for basic needs.

Who naturally has legal custody?

Mothers and fathers, (if they were married to the mother at the time of the birth or have acknowledged the child) are the natural custodians of the child. Parents have constitutional rights to the care, custody and control of their children. Unless a court says otherwise, parents have rights and responsibilities that others cannot deny to them.

What are the different types of legal custody?

There are several different types of legal custody in Louisiana. They are provisional transfer of custody by mandate, voluntary transfer of custody by court order, tutorship, court ordered when the child is in state custody and court ordered when the child is in the parent's

custody. The sheets that follow this will give you more detail on the types of legal custody.

How do I decide on the type of legal custody?

There are several ways to get legal rights regarding the child in your care. Which you choose depends on what authority you are seeking, whether or not the parent(s) consent, and what level of documentation is required by others.

For example, consider what types of authority you want and who will have to accept your documentation:

Caring for the child in home:

Check with home owners insurance;
check with housing manager

Enrolling the child in daycare/school:

Check with the particular daycare
program or school

Taking the child to the doctor/dentist:

Check with doctor's office and health
insurance carrier

Receiving support for the child

from parents: Check with support
enforcement

Getting government benefits for the

child: Contact the government program
office

If I get legal custody from a court, do the parents still have any rights regarding the child?

Unless you have legally adopted the child, parents still have certain rights. Those rights include the right to visitation, the right to consent to adoption, the right to determine religious affiliation, responsibility of support and the right to inherit from the child. These rights can be limited but only if a court order specifically limits them.

What papers should I have for the child?

You should always have a copy of the child's birth certificate together with the documents that authorize you to have custody of the child. Keep the originals of the birth certificate and other documents in a safe place. Make a copy of all the documents so that you can carry them with you and show them to whoever asks for proof that the child is in your custody. Never give up your original.

What happens if child protection becomes involved with the child?

If the Department of Children and Family Service (DCFS) receives a report of child abuse or neglect, they are obligated to investigate. If DCFS finds that the report is valid and the child is not safe in the home, they will ask the court for an order to remove the child from the home and place the child in the custody of the state. This order will begin a court process called "Child in Need of Care" or CINC.

What is a Child in Need of Care (CINC) case?

A Child in Need of Care case comes before the court because there is a belief that a child has been harmed or is at risk of harm due to abuse, neglect or abandonment. These cases often begin when a child has been removed from their home by the police or a social worker. The court then must determine that the child cannot remain safely in the home and it is in the child's best interest to be placed elsewhere. This court process does not always result in the child being placed in DCFS custody but that is one of the options for the court. For more information on the options for the court see the Legal Fact Sheets on Foster Care, Kinship Custody, Guardianship and Adoption.

There will be multiple court hearings until the child is returned home or adopted.

For an outline of the entire court process see:

http://lpdb.la.gov/Advocating%20for%20Clients/Materials/txtfiles/pdf/Guide_To_The_Court_Process.pdf

What is Foster Care?

When a child is removed from the home and placed in the custody of the state, no matter where they are living it is called foster care. Once a child is placed in the custody of the state, it is the responsibility of DCFS to select an appropriate care setting for the child. This could be a relative or someone close to the child that has been approved and supervised by DCFS or with a family that is certified by the state as a foster home but not known to the child.

How do I become involved if the child is removed from the home?

During the initial investigation and throughout a CINC case, DCFS is obligated to search for and determine if there are relatives that are willing and able to care for the child. This search should also include non-blood relatives that may be close to the child such as godparents, neighbors, family friends, etc. These people are called fictive kin. As soon as you know that the child is in DCFS custody, it is critical that you contact DCFS to let them know that you are interested in having the child live with you or that you are interested in maintaining some level of relationship and contact with the child. You may also have information about other relatives who could possibly care for the child rather than having the child placed with certified foster parents whom the child may not know.





Non-Legal Custodian Affidavit

What is a Non-Legal Custodian Affidavit?

It is an affidavit signed by the person having non-legal custody of a child but having physical custody of the child. You cannot have any type of legal custody and you cannot be a foster parent of a child in state's custody. The child must be under 18 years old and living with the person. It gives the authority to make certain limited decisions for the child in regards to health care and school. It does not give you legal custody of the child.

When should it be used?

If a child is living in your home who is not in your legal custody and the parent is unavailable for any reason, this form may be of assistance. It is best intended to meet short-term situational needs, as it is very limited. It may be used, for example, when a parent is hospitalized and the child who needs to be enrolled in school is staying with you.

How is it done?

It requires the form set forth in the law and the signature of the person with whom the child is living.

How long does it last? When does it expire?

The parent can override any decisions you make using this form as long as the parent's decision does not harm the child. The longest the signed

form is good for is one year from the date it is signed. If the child is no longer living with you, you can no longer use this form and you must notify anyone you have given it to.

Do both parents have to sign?

Neither parent has to sign. Only the person with whom the child is living and is providing care of the child signs the affidavit.

What can the person who has a Non-Legal Custodian Affidavit do for the child?

The person can only make limited decisions for the child. Those are decisions in regards to school and health care. You should be aware that many school systems will not accept this form for enrollment in school. Be sure to check with your local school system to find out what documents you need.

Can the person who has a Non-Legal Custodian Affidavit prevent the parents from visiting or removing the child from their home?

No, parents still have the right and the obligation to communicate with the child. Visitation and physical custody of the child can only be limited by a court.

Do the parents still have the obligation to support the child?

Yes, parents still have the obligation to support the child. A voluntary arrangement with the parents may be the best and least contentious way to provide needed support for the child. If this is not possible, you should contact the local Support Enforcement Office for guidance on how to establish initial child support benefits, having established support payments transferred to you, or you may hire an attorney to file directly in your parish district or juvenile court.

Can I apply for benefits for the child or have the benefits the child receives put in my name?

No, this only authorizes you to make education and medical decisions. It does not allow you to apply for health care coverage through your insurance company.

Is there a form for a Non-Legal Custodian Affidavit?

Yes. The law about a Non-Legal Custodian Affidavit includes a form found in Louisiana Revised Statute 9:975. For the form see <http://www.legis.la.gov/Legis/Law.aspx?d=108363>



Provisional Custody by Mandate

What is Provisional Custody by Mandate?

It is a temporary transfer of legal custody by the child's parent or parents naming another person to have "care, custody, and control" of a minor child. The child must be less than 18 years old.

When should a Provisional Custody by Mandate be used?

If a parent is not able to care for a child for whatever reason, such as illness, poverty, military service, etc. on a temporary basis, this form may be the simplest solution.

How is it done?

A Provisional Custody by Mandate is done by affidavit. The form is signed by the parents and you in front of a notary and two witnesses.

How long does Provisional Custody by Mandate last? When does it expire?

The longest the signed form is good for is one year from the date it is signed. The parent can set a shorter period. It would also end 15 days after the death of a parent. The parent can take it back at any time.

Do both parents have to sign?

No, but the person signing must have legal custody of the child and it does not affect the rights of the non-signing parent.

What can the person who gets Provisional Custody by Mandate do for the child?

The person giving someone Provisional Custody by Mandate can pick which things they want the other person to do for the child. These things cover broad areas like medical care, school, discipline, and taking care of the child's shelter, support and overall welfare. Here is what the law says these things:

Consenting to and authorizing such medical care, treatment, or surgery as may be deemed necessary for the health, safety, and welfare of the child.

Enrolling the child in such schools or educational institutions as necessary for the child's proper education.

Disciplining the child in such reasonable manner as may be necessary for the child's proper rearing, supervision, and training.

Doing and performing all other such acts as may be necessary for the shelter, support, and general welfare of the child.

However, please be aware that some jurisdictions, medical facilities, school districts, etc. may not accept this type of custody to access service, enroll child in school, etc. Based upon what you will need to do, you may want to assess obtaining another type of legal custody which will provide greater legal authority to you.

Can the person who gets Provisional Custody by Mandate prevent the parents from visiting with the child?

No, parents still have the right and the obligation to communicate with the child. Visitation can only be restricted by court order.

Do the parents still have the obligation to support the child?

Yes, parents still have the obligation to support the child. A voluntary arrangement with the parents may be the best and least contentious way to provide needed support for the child. If this is not possible, you should contact the local Support Enforcement Office for guidance on how to establish initial child support benefits, having established support payments transferred to you, or you may hire an attorney to file directly in your parish district or juvenile court.

Can I apply for benefits for the child or have the benefits the child receives put in my name?

For benefits such as Social Security, Veteran's Benefits and Supplemental Security Disability Income (SSI), and other programs, you should contact those agencies directly to determine what level of documentation would be needed for you to be named as payee of those benefits.

Is there a form for Provisional Custody by Mandate?

Yes. The law about Provisional Custody by Mandate includes a form found in Louisiana Revised Statute 9:954. The notary should be able to help you complete it. For the form see <http://www.legis.la.gov/Legis/Law.aspx?p=y&d=108362>



Voluntary Transfer of Custody

What is Voluntary Transfer of Custody?

A Voluntary transfer of custody is a court proceeding during which a parent or parents voluntarily transfer legal custody of a child to any responsible adult so that a child may receive adequate care and treatment.

When should a Voluntary Transfer of Custody be used?

If a parent is going to be absent or unable to care for a child for a long period of time, a Voluntary Transfer of Custody may be appropriate. It is also used when the Department of Children and Family Services (DCFS) has received a report of abuse or neglect and they determine that a transfer to another responsible adult would be appropriate rather than filing a child abuse petition against the offending parent.

How do I start the process to get an order for Voluntary Transfer of Custody?

A written petition has to be filed in the court that does juvenile cases where the parents or you live. At least one of the parents has to sign the petition. You will sign an affidavit attached to the petition saying you are willing to take custody of the child. After you give the clerk of court the petition, the court will notify every one of the hearing date.

Do both parents have to sign the petition?

If a parent is not joining in the petition, the reasons have to be in the petition. If a parent can't be located, the court may appoint someone, called a curator, to try to find them.

Will the court appoint a lawyer for anyone?

The court can appoint a lawyer for the parents and/or the child. If DCFS is involved in the case, then the parents and child have a right to have a lawyer appointed for them. Some courts always appoint an attorney for the child. It is that attorney's job to represent the wishes of the child.

Do I need a lawyer for this process?

A lawyer may be helpful. However, most courts have petition forms available to complete and most people are able to complete the process on their own.

What will happen at the hearing?

The judge will review the petition. The judge may ask questions of any parent that is present and you. Depending on the age of the child, the judge may also ask them questions. However, if there is no objection to the transfer of custody the court may grant the transfer without any testimony. At the end of the hearing, the court will make a judgment on whether or not to grant the transfer.

How long does the judgment last?

If the petition asks for a specific time period and it is put in the judgment, then it will expire at that time or when the child reaches eighteen (18) years of age. Otherwise, it is good until you, the parents or both of you make a request of the court called a modification and the court agrees to change the judgment.

If you are granted custody, what can you do for the child?

If you are granted custody these are the things the law says you have the right to do:

- Have the physical custody of the child;
 - Protect the child;
 - Train and discipline the child;
 - Provide food and shelter;
 - Enroll and make education decisions for the child; and,
 - Make medical decisions for the child.
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Can you prevent the parent from visiting with the child?

Parents still have an obligation and right to communicate with the child. If a limitation is asked for in the petition and the judge puts it in the judgment, then you can limit visitation. However, you must follow the visitation rules in the judgment. If there is nothing regarding visitation in the judgment, then you cannot limit the visitation. However, you and the parents can agree to visitation.

Do the parents still have the obligation to support?

Yes, parents still have the obligation to support the child. If asked for in the petition, the judge can put a child support amount in the judgment. If you will need or expect financial support from the parent(s), it is important that this is addressed and included prior to the final judgment. If the State has been receiving support payments from the parent(s), once custody is transferred to you, those support payments may be transferred directly to you.

Can I apply for benefits for the child or have the benefits the child receives put in my name?

Once custody has been transferred to you, you may apply for any benefits to which the child is eligible or entitled or have benefits the child is receiving transferred to you.

Is there a form for a petition for the Voluntary Transfer of Custody?

Yes. The law on Voluntary Transfer of Custody includes a form found in Louisiana Children's Code Article 1515. Many courts have petition forms available for you and the parent to fill out. For the form see <http://www.legis.la.gov/Legis/Law.aspx?d=72983>

Are there any court costs that will have to be paid?

Yes, the amount will vary from court to court. You may also have to pay a notary to sign the affidavit of acceptance. Another cost may be a fee if a curator has to be appointed to find an absent parent.



Court Ordered Kinship Custody

What is Kinship Custody?

When the state has removed a child from the home, one of the choices the court has besides state's custody is to give custody of the child to a suitable person. This person can be a relative (kin) or someone close to the child (fictive kin).

When is Kinship Custody used?

If the court finds that the child cannot return to their parents but it is not necessary for the child to be in the custody of the Department of Children and Family Services (DCFS) and that yours is a safe and appropriate home, the court can determine this is the appropriate custody choice for the child. The law prefers that the child be with relatives if they cannot be with their parent.

How is it done?

After the child is removed from the home, the court will have several hearings. Beginning at the first hearing the judge can decide to give you custody of the child on a temporary basis. Eventually, the judge will determine if the child is a Child in Need of Care. Then the court must decide who should have custody on a more long term basis. This is when the court can decide that you should have custody.

How long does Kinship Custody last? When does the court order expire?

No custody can be changed without a court order. Kinship Custody is designed to be temporary until the parents are able to have the children returned to them or they are adopted. However, there are some children who remain in Kinship Custody until they turn eighteen years old. If a child remains in Kinship Custody, the court can change the custody order at any time after a hearing.

Do I need an attorney?

Generally, you do not need an attorney. You may choose to get an attorney especially if you disagree with the court's or DCFS' plan for the child. DCFS will be represented by an attorney. The parents will be appointed an attorney. The child will be appointed an attorney whose job it is to represent the wishes of the child.

What can you do for the child in your custody?

If granted custody you have the right to:

- Have the physical custody of the child;
- Protect the child;
- Train and provide reasonable discipline for the child;
- Provide food and shelter;

Enroll and make education decisions for the child; and,

Make medical decisions for the child.

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Can you prevent the parent from visiting with the child?

If the judge puts visitation rules in the judgment, then you can limit visitation. However, you must follow the visitation rules in the judgment. If there is nothing regarding visitation in the judgment, then you cannot limit the visitation. However, you and the parents can agree to visitation. Parents still have an obligation and right to communicate with the child.

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Do the parents still have the obligation to support?

Yes, parents still have the obligation to support the child. The judge can put a child support amount in the judgment. Or, you may be able to file for child support payments thru the Child Support Enforcement Office with the Department of Children and Family Services. Contact that local or regional office to find out what information and documentation you will need to file for support or change existing support payments to you as payee. There may be a small one-time fee to process this application. You may also hire an attorney to file with the district or juvenile court where you reside.

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Can I apply for benefits for the child or have the benefits the child receives put in my name?

Yes, you may apply to be named payee for any benefits to which the child is eligible. You should contact the specific agency handling those

benefits to determine what documentation you will need.

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Is there any paperwork I have to provide the court?

No, the state will provide the court with all the necessary paperwork. However, you should receive notice of every court date for the child. If the child is living with you, you may be most familiar with the child's needs, and you should speak up and voice any concerns you may have for the child. If you are granted custody, the court should give you a copy of the judgment granting you custody. This judgment is very important. If the judgment is not provided, you should ask for one. You will need to show it to schools, health care providers, etc. to prove you have custody.

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Are there any court costs that I will have to pay?

No

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Child in Need of Care / Foster Care

What is Foster Care?

When a child is removed from the home and placed in the custody of the state, no matter where they are physically living, it is called foster care. Once a child is placed in the custody of the state, it is the responsibility of the Department of Children and Family Services (DCFS) to select an appropriate care setting for the child. This care setting could be in the home of a relative or someone close to the child that has been approved and supervised by DCFS or with a family that is certified by the state as a foster home but not known to the child, or a group care setting (e.g. group home).

When is Foster Care used?

Foster Care is used when the court has found removal from the child's caregiver or parent(s) is necessary to assure the child's safety and welfare and there is no other appropriate custody choice for the child.

How is it done?

After the child is removed from the home, the court will have the first hearing within 72 hours. At that hearing and the hearings to follow, the judge determines the best custody choice for the child. The court must always find that the custody choice is in the best interest of the child.

At first, you may not know that the child is in state custody. As soon as you know, it is critical that you contact DCFS to let them know that you are interested in having the child live with you or

that you are interested in maintaining some level of relationship and contact with the child. DCFS is also required to notify relatives of a child's placement in foster care, assess a relative's interest, and make relatives aware that future placement consideration may be lost if they do not come forward initially. The law requires consideration of relatives, but the relative must be willing and suitable. Additionally, placement with the relative must be in the best interest of the child.

DCFS can place the child with you on a temporary basis. They will then determine if your home can be approved for the child on a long-term basis and whether you will be certified as relative foster parent to care for the child. DCFS will present to the court for approval the plan for the child to remain in their custody but to live in your home. The plan must be found to be in the best interest of the child.

How can I become a foster parent?

To get information on becoming a foster parent and the state requirements for foster parents see: <http://www.dcf.louisiana.gov/indexcfm?m-d=pagebuilder&tmp=home&pid=374#undefined>

How long does Foster Care last? When does the court order expire?

Foster Care is designed to be temporary until the parents are able to have the children returned to them safely; they are adopted, or placed under guardianship or the legal custody order is changed by the court. (See Fact Sheets on

Adoption and Guardianship) The child may remain in foster care until they turn eighteen years old. Court involvement for an eighteen year old would be terminated. However, the child may be eligible for voluntary extended foster care services and supports until age 21 through DCFS.

Do I need an attorney?

Generally, you do not need an attorney. You may choose to get an attorney especially if you disagree with the plan for the child but you will not be appointed an attorney by the court. DCFS will be represented by an attorney. The parents will be appointed an attorney. The child will be appointed an attorney whose job it is to represent the wishes of the child.

What can you do for the child in Foster Care?

If a child that is in state custody is placed in your home you will be expected to:

- Provide for the daily care of the child which includes food, clothing (adequate, clean and in good repair), shelter, personal care, hygiene, and transportation;

- Ensure safety and security of the child;

- Ensure that the child attends school, if age appropriate and participates in other normal childhood activities;

- Provide nurturing, reasonable discipline, and moral instruction;

- Transport and accompany the child to all health, dental and mental health appointments and school meetings;

- Make the child assessable for confidential attorney-client visits; and,

- Participate in and support the child and family case plans and goals.

You should receive notice of every meeting and court date for the child. As you spend the greatest amount of time with the child, you should speak up, share relevant information and voice any concerns you may have for the child.

For more details on the obligations of foster parents please see: <http://www.dcfsl.a.gov/index.cfm?md=pagebuilder&tmp=home&pid=194#undefined>

Can I enroll the child in school or give medical consent for the child?

DCFS will work with you including providing you with necessary documents to enroll the child in school, make education decisions and to obtain necessary medical treatment and medical decisions. Unless it is an emergency, you should consult the child's DCFS caseworker in any educational or medical decisions for the child.

Can I prevent the parents from visiting with the child?

No, DCFS will develop a plan for the family. Part of the plan will be visitation terms; how often, where the visitation will take place and the amount of supervision there must be during the visitation. The plan cannot be changed unless everyone including DCFS agrees to the change or the court determines the visits are harming the child. Parents still have the obligation to communicate with the child in the manner outlined in the plan.

Do the parents still have the obligation to support the child?

Yes, however any child support payments made by the parents go directly to DCFS.

Can I apply for benefits for the child or have the benefits the child receives put in my name?

Yes, you can apply for benefits on behalf of the child. DCFS will provide you with paper work that you will need to give to any place where you apply for benefits or to get benefits transferred. If you apply for Social Security benefits such as Supplemental Security Income (SSI), they may ask DCFS for more information. If you become a certified relative foster parent, you will receive a monthly board payment to help cover the child’s needs.

If you receive Kinship Care or Foster Care payment and the child is also eligible for SSI, you will have to choose which benefit you wish to receive.

Is there any paperwork I have to provide the court?

No, the state will provide the court with all the necessary paperwork.

Remember, you should receive notice of every meeting and court date for the child. As you spend the greatest amount of time with the child, you should speak up, share relevant information and voice any concerns you may have for the child. If you have school or medical documents for the child, it is helpful to provide that information to DCFS and the court.

Are there any court costs that I will have to pay?

Generally, no. However, if you hire an attorney, they will discuss with you any possible fees and costs.



Child in Need of Care / Guardianship

What is Guardianship?

The word “guardian” is used frequently to refer to the person who has legal authority over a child. However, the only time someone is officially named a guardian in Louisiana is after a child has been found to be a Child in Need of Care. Once this determination is made, the court can order the placement of a child with a guardian. The guardian has the duty and authority to make decisions that have a permanent effect on the child.

When is Guardianship used?

Guardianship is used when neither reunification with the parents nor adoption is in the best interest of the child. It is intended to be a permanent placement for the child.

How is it done?

The child must have been found to be a Child in Need of Care by the court. Then the Department of Children and Family Services (DCFS), the parent or the attorney for the child may make a request of the court asking that a guardian be appointed. The child must have lived with the guardian for at least 6 months. There will be a home study of you and your home followed by a hearing to determine if guardianship is in the best interest of the child.

How long does Guardianship last? When does the court order expire?

The order continues until the child turns 18 years old. It can only be changed by court order, if the guardian no longer wants to or can no longer be the guardian. It can also be change if the guardianship is no longer in the child’s best interest.

Do I need an attorney?

Generally, you do not need an attorney. You may choose to get an attorney especially if you disagree with DCFS’ plan for guardianship. DCFS will be represented by an attorney. The parents will be appointed an attorney. The child will be appointed an attorney whose job it is to represent the wishes of the child.

What are my duties as a guardian?

If you are granted guardianship, you have the same rights and responsibilities of legal custody, which includes:

- Having physical custody of the child;
- Protecting the child;
- Training and providing reasonable discipline for the child;
- Providing food and shelter;
- Enrolling and making educational decisions for the child; and,
- Making medical decisions for the child.

Also, you can consent to the child's marriage and enlistment in the armed forces. You may not consent to the adoption of the child.

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Can I prevent the parents from visiting with the child?

The judgment granting you guardianship must address visitation. You and the parents must follow that court order.

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Do the parents still have the obligation to support the child?

Yes, parents still have the obligation to support the child. The judgment may order the parents to pay support. A voluntary arrangement with the parents may be the best and least contentious way to provide needed support for the child. If this is not possible and there is no judgment of support, you should contact the local Support Enforcement Office for guidance on how to establish initial child support benefits, having established support payments transferred to you, or you may hire an attorney to file directly in your parish district or juvenile court.

Additionally, if you have been the child's certified foster parent for six months, the child may qualify for guardianship subsidy assistance which may include monthly financial assistance, medical coverage, and other supports. The subsidy has to be approved prior to the granting of guardianship by the court.

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Can I apply for benefits for the child or have the benefits the child receives put in my name?

Yes, you should contact the specific agency providing benefits and find out what documents you will need. If DCFS was previously receiving benefits for the child, they may be able to

provide you with documents to assist you in transferring to you as payee.

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Is there any paperwork I have to provide the court?

No, the attorneys will provide the court with all the necessary paperwork. However, you should receive notice of the court date, and a copy of the order granting guardianship once signed by the judge.

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Are there any court costs that I will have to pay?

No



Adoption

What is Adoption?

Adoption is the legal process through which a new legal family is formed in place of the child's birth family. The adopting parents assume permanent legal responsibility for a child and assume all the rights and parental authority that a biological parent would have.

When is Adoption used?

If the legal rights of all the parents have been terminated by a court or they have surrendered their legal rights or they have passed away, then the child can be adopted.

How is it done?

Adoption is a very complicated legal process. There are three types of adoption: agency adoption which includes DCFS, private adoption, and intrafamily adoption. Kinship families with children in Department of Children and Family Services (DCFS) custody would fall under agency adoption guidelines. Most relative family adoptions would fall under intrafamily adoption. A private adoption is arranged by an intermediary, typically an attorney who represents parents wishing to place their child for adoption. The attorney arranges with adoptive parents for the child to be placed with them.

All three types of adoption begin by the removal of the rights of the biological parents which "frees" the child to be adopted by others. The removal can be a voluntary legal surrender or an involuntary termination of rights by a court. In

order to ensure that would-be adopting parents can offer a safe, secure and loving home, a home study must be done of all potential adoptive homes. A Petition for Adoption is filed with the court containing very detailed specific information. If the court approves, it will issue a judgment of Adoption. The child will become the legal child of the adopting parents just as if they were born to the adopting parents.

How long does Adoption last?

When does the court order expire?

Adoption lasts a lifetime.
The court order never expires.

Do I need an attorney?

YES, Adoption is a very complicated legal process. If not done right, it can be found to be invalid. In most cases if you are adopting a child who is in DCFS custody, limited financial assistance is available to cover most, if not all attorney expenses. Otherwise, you must pay for your own attorney.

What can you do for the child you adopt?

Your duties and responsibilities are the same as if the child you have adopted was your biological child. Likewise, the adopted child is also eligible for any benefits as if they were your biological child.

Can you prevent the biological parent from visiting with the child?

It depends. Generally you can decide with whom the child can visit and when and how any contact will occur with anyone, including biological family members. However, for a child with positive connections and attachments to others, especially siblings, visitation decisions should be carefully considered. Louisiana law now permits you to sign a continuing contact agreement with biological family members that is enforceable in court as long as no conflict arises. In addition, under limited circumstances, the law also provides for biological grandparents to have visitation.

Do the parents still have the obligation to support?

Once an adoption is finalized, the biological parents have no further obligation to support.

From whom can the child inherit?

The child has the same rights to inherit from their adopted family and from their biological family as if the child had not been adopted. You should consult an attorney as to the child's inheritance rights.

Can I apply for benefits for the child or have the benefits the child receives transferred to me?

Once the adoption is final, you may apply for benefits for the child. Any benefits the child receives can be transferred to you. In fact, you are obligated to inform any agency that is providing benefits to the child that the child has now been adopted. The agency may reassess the child's eligibility based on the adoption. In some instances, the reassessment may decrease

the benefits or it may make the child eligible for more benefits.

Is there any paperwork I have to provide the court?

There is a lot of paperwork that has to be provided to the court in an Adoption. The attorney who represents you should draft every required document and file everything that is necessary with the court.

Are there any court costs that I will have to pay?

There are court costs which will vary from court to court. If you are adopting a child in DCFS custody, the court costs may be covered by DCFS if the child is eligible for an adoption subsidy. The child's eligibility for adoption subsidy benefits must be determined prior to an adoption finalization hearing and you should discuss and obtain in writing a decision regarding the child's eligibility. Otherwise, those court costs and other legal fees are your responsibility.



Custody Granted in District Court

What is Custody Granted in District Court?

It is sometimes necessary for a court to determine who shall have custody of the child when the state is not involved. This type of custody determination is not done in Juvenile Court but in the District Court. One of the options for the court is to give custody of the child to a non-parent.

When is custody granted to a non-parent?

If the court determines that joint custody or sole custody to either parent will result in substantial harm to the child, the court can award custody to a non-parent who can provide a wholesome stable environment for the child. Custody to a non-parent can also be granted when the parent is deceased or cannot be found.

Who qualifies as a non-parent custodian?

Any person who can provide an adequate and stable environment can be named a non-parent custodian.

How is it done?

Obtaining custody as a non-parent is a complicated legal process. Paperwork must be filed with a district court. Unless you come to an agreement with the parents, a judge will decide whether or not to grant custody to you. You will have to clearly prove to the judge that giving custody to the parents will substantially harm the child and that you can provide an adequate

and stable environment for the child. Always the judge must determine that the custody arrangement is in the child's best interest.

How long does custody to non-parent last?

Custody to a non-parent will last until there is a change in the court order or the child turns 18.

Can I get temporary custody from the District Court?

Yes, temporary custody entails filling out paper work that requires very specific information. Those papers must be filed with the court and the parents must be served with those papers. Some of the district courts have forms on line for temporary custody or they are available from the clerk of court. Also, some of the district courts have self help desks which can assist you in the process.

Temporary custody is only good for a limited time period and may only be extended for an additional 15 days by the court. During that time period the court must conduct a full hearing, to determine if the custody should remain with you. The time period depends on the type of temporary custody you request. Be sure to ask the court about the timelines.

Do I need an attorney?

YES, obtaining custody as a non-parent is a very complicated legal process.

What are the duties and responsibilities of a Non-Parent Custodian?

Your duties and responsibilities would be the same as if the child was your biological child.

Can I prevent the parent from visiting with the child?

The same court that decides to name you the Non-Parent Custodian will determine whether or not and how the parents can visit. You must follow what the court orders until it is changed by the court.

Do the parents still have the obligation to support?

The same court that decides to name you the Non-Parent Custodian will determine how much the parents must pay in child support.

Can I apply for benefits for the child or have the benefits the child receives put in my name?

Yes

Is there any paperwork I have to provide the court?

There is a lot of paperwork that must be provided to the court in order to obtain Non-Parent Custody. The attorney who represents you should file everything that is necessary with the court.

Are there any court costs that I will have to pay?

There are court costs which will vary from court to court.

Tutorship

What is Tutorship?

Tutorship is when a person is legally responsible for caring for a minor child and has been appointed by a court to be the child's tutor.

Guardianship is the term used in every other state for tutorship. You will even see it in many Louisiana laws. However, in Louisiana, someone can only officially be named a guardian in a Child in Need of Care Proceeding. (See CINC/Guardianship Fact Sheet)

When is Tutorship used?

If a child's parents are divorced, unable to care for the child or when one or both parents have died, a tutor can be named by the court for the child. It is usually used when a child has money or property or both parents are deceased. The most frequent use of tutorship is when a child has a personal injury money claim from an accident.

How is it done?

Tutorship is a very complicated legal process. There are multiple types of tutorship. As a non-parent, the court may appoint you as tutor if:

You are named in the parent's will;

If no one is named in the will and you are a close blood relative; or,

If no one is named in the will, both parents have died and there are no close relatives.

All begin with a petition to the district court, not the juvenile court, containing very specific information. If the court approves and finds that it is in the child's best interest, the court will appoint a tutor. The tutor must accept the appointment, take an oath and post security that equals what the child owns. The court will then issue letters of tutorship which gives you the permission to act for the child. The court will also appoint an undertutor to ensure that the tutor is acting in the child's best interest.

How long does Tutorship last?

When does the court order expire?

Tutorship ends when the child turns 18 years old, or is emancipated. If the court finds that the Tutor is not acting in the best interest of the child, the court can order that the Tutor is changed to another person. The only time a tutorship can last past the child's 18th birthday, is if prior to that the court finds the child has a serious development disability. Then the tutorship can last indefinitely or until the court orders that it ends.

Do I need an attorney?

YES, Tutorship is a very complicated legal process. If not done right, it can be found to be invalid. If the child thinks that you did not act properly as their tutor, the child has until age 22 years old to sue you. Therefore, legal assistance from an attorney experienced in this area is very important.

What are the duties and responsibilities of a tutor?

The duties and responsibilities of a tutor may, based on the court's order, include:

The custody and care of the child including medical decisions;

Properly raising and educating the child;

Managing anything the child owns; and,

If the child owns property, to provide the court an annual report.

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Can you prevent the parent from visiting with the child and do the parents still have the obligation to support?

These issues may depend on previous court orders. Therefore, they are very complicated and you should consult the attorney representing you in the Tutorship in regards to visitation and support.

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Can I apply for benefits for the child or have the benefits the child receives put in my name?

Yes, depending on what the court has ordered.

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Is there any paperwork I have to provide the court?

There is a lot of paperwork that has to be provided to the court in Tutorship. The attorney who represents you should file everything that is necessary with the court.

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Are there any court costs that I will have to pay?

There are court costs which will vary from court to court.

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Birth Certificates

Louisiana is a “closed record” state. This means that birth and death certificates are not public records. All requests for birth or death certificates must include proper identification, appropriate fees, and a completed application.

Who May Order A Birth Certificate?

The person named on the document;

The current spouse of the person named on the document;

Mother or father of the person named on the document;

An adult child of the person named on the document;

Sister/brother of the person named on the document;

Grandmother or grandfather of the person named on the document;

Grandchild of the person named on the document; or,

An attorney representing one of the above with a signed contract of representation or authorization.

When another adult other than the legally entitled individuals listed above is requesting the record of a child, they must present a judgment of custody for the child. Notarized custody papers or provisional custody mandates are not acceptable.

What is proper identification?

Persons who apply for a certified copy of a birth certificate must produce identification in the form of one primary document or two secondary documents.

A. Primary Documents

Current state issued driver’s license that displays a photograph which clearly identifies the applicant.

Current state issued picture identification that displays a photograph which clearly identifies the applicant.

Current U.S. military identification card that displays a photograph which clearly identifies the applicant.

Current U.S. issued or Foreign issued Passport.

U.S. Certificate of Naturalization (Form N-550, N-570 or N-578).

U.S. Certificate of Citizenship (Form N-560 or N-578).

High School Students - a current school yearbook or current school identification document with a photograph which clearly identifies the applicant.

B. Secondary Documents

Current student picture identification card from a college or university when accompanied by a 100% fee paid receipt for the current semester. (COUNTS AS TWO DOCUMENTS).

A W-2 form issued within the last two years plus an original signed Social Security Card. The Social Security numbers must match. (COUNTS AS TWO DOCUMENTS).

Social Security card.

Original adoption papers.

Official certified deeds or title to property.

Certificate of vehicle title.

Insurance policy must show name of the applicant (Health, Home, Life, and Auto).

Payroll stub (cannot be handwritten) showing the name and social security number of the applicant.

How can you obtain a Louisiana birth certificate?

There are three ways to obtain a Louisiana birth certificate:

1. In Person

Vital Records Central Office in
New Orleans
1450 Poydras Street, Suite 400,
New Orleans, LA
504 593 5100

Participating Louisiana Clerks of Court -
additional fees apply*

Vital Records Kiosks - additional fees
apply*

2. Mail

Bureau of Vital Records and Statistics
P.O. Box 60630
New Orleans, LA 70160

3. Internet, Fax and Telephone through
VitalChek Network at Vitalchek.com or
1-877-605-8562

What about a child in the custody of the Department of Children and Family Services (DCFS)?

The DCFS worker will provide you with a certified
birth certificate.

*For Further Information See:

<http://ldh.la.gov/index.cfm/page/635>

Education

What documents do I need to enroll the child in school?

You must have certain documents in order to enroll the child in school. These documents include:

Birth Certificate, official record;
Immunization records unless contraindicated by a written physician's statement or a written dissent from the student or parent; and,
Parent or guardian photo ID.
You will also have to check with the school or your local school board to determine what documentation you will need to prove that the child resides with you in the school district and you have the authority to make education decisions for the child.

If a student is homeless or does not regularly stay at one location, you may be able to enroll the child without all the documents.

If you have any legal documents to show a transfer, change, or restrictions in child custody, give the school or district a copy.

If the child is in the custody of Department of Children and Family Services (DCFS), the child's caseworker will be able to provide you with the written documentation you will need to enroll the child in school. Additionally, if the child is in DCFS custody, limited funding is available to assist with costs of school uniforms and school supplies.

When must I enroll a child in school?

Louisiana law requires that all students attend school from age 7 to 18 unless they have already graduated from high school. The child may enter first grade if they are 6 years old by September 30th. The law requires that a child cannot enter first grade without proof that they attended full day kindergarten or have passed a screening test. Many school systems offer pre-kindergarten for younger children.

What are the attendance requirements?

Louisiana requires students to attend school for a certain number of days to be promoted to the next grade and earn credit for a course. Students must attend at least 167 days to earn credit and be eligible for promotion to the next grade. Exempt and excused absences are not counted against the attendance requirement. Examples are extended illness document by a doctor or to celebrate religious holidays. All other absences are counted against the attendance requirement. Tardiness is not counted against the attendance requirement. However, school districts may have their own policy on tardiness.

When is a child considered truant?

A child is considered truant after the fifth unexcused absence or occurrence of being tardy within any school semester. Tardy includes leaving school early unexcused. The school must give you written notice and hold a conference with you on or before the child's third unexcused absence or tardy.

What will happen to me if a child in my care is truant?

A child who is habitually truant and his caregiver may be subject in the juvenile court to a Family in Need of Services case. The child and the caregiver may have to go through court ordered evaluations and follow specific court orders. Also, the caregiver may be fined and ordered to perform community service. Those punishments for the caregiver can increase with each offense.

When can a child drop out of school?

At age 16 a child can withdraw from school with the written consent of their caregiver if they have approval from the school to enroll in an alternative education program or a vocational-technical education program or an adult education program. Also, students may enroll in the National Guard Youth Challenge Program.

What is the school's discipline plan?

If you have not received the school's discipline plan, ask for a copy. Each school develops its discipline plan, in accordance with state law. For each discipline infraction, there is a punishment, ranging from mild punishments, such as reprimands, to more severe punishments, such as detention. The discipline plan also outlines the infractions that warrant suspension and expulsion. If your child complains that he/she has been disciplined unfairly, call the school and make an appointment to see the teacher and/or principal. At the meeting, be open to listening to the teacher's side of the incident. Student behavior improves when teachers and parents work together.

What to do if the child is suspended or expelled?

If the child is suspended from school, you should receive a telephone call from the school giving you the reasons for the suspension and how long it will last. They will also inform you that you must attend a conference at the school to discuss the problem before the child can return to school. If the school cannot reach you by telephone, they must send you a registered letter with the same information. If you fail to attend the conference, then the child will be considered truant. They have to inform you in writing the reasons for the suspension. If you disagree with the school regarding the suspension, you can appeal to the superintendent of schools.

If the child is expelled from school, the same procedure as with a suspension must be followed. However, the superintendent, rather than the school principal, makes the decision to expel rather than suspend. The caretaker must be notified by certified mail of the decision. If you disagree with the superintendent's decision, you can appeal to the school board and then to the district court. During an expulsion the superintendent shall place the pupil in an alternative school or in an alternative educational placement.

If the child has an IEP or 504 Plan for a disability, they have some extra protections against suspensions and expulsions.

What is an alternative school?

Alternative schools may mean programs designed to offer variations of traditional instructional programs and strategies for the purpose of increasing the likelihood those students who are unmotivated or unsuccessful in traditional programs or who are disruptive in the traditional school environment remain in school

and obtain a high school diploma. Alternative schools generally are on a campus separate from the regular school. They hold students to strict standards of behavior in highly structured and controlled environments. Often, students who are expelled from traditional public schools are required to attend alternative schools.

Can I enroll the child in a non-public school?

Yes, in Louisiana tens of thousands of students are enrolled in nonpublic schools. These educational settings may include those approved and registered with the state and those only registered with the state. Nonpublic schools include faith based schools and other private schools. You may also choose to enroll the child in a home study program. This independent education is typically provided through a home study program or a registered nonpublic school approved by the state Department of Education.

If the child is in DCFS custody, special provisions apply regarding home schooling or alternative schools. Check with the child's caseworker before enrolling the child in any of these type educational settings.

For further information see <https://www.louisianabelieves.com/schools/nonpublic-schools>.

How do I request special education services?

Obtaining special education services for a child is a specific process with established timelines. The first step is to make a request at the child's school for an evaluation that explains why you want special education or believe it would be helpful. You should make this request in writing with the date you give it to the school, keep a copy for your records and

ask the school sign with the date they received it. You may also send a copy of the request to the school district's special education director/supervisor. If the child is in school, the school should refer your request to the school building level committee. Be sure to give the school any additional information, like evaluations, diagnoses, professional recommendations, that will help them make an informed decision. They will determine if the child needs a full evaluation. The school district is not required to evaluate every student after receiving a request, but if they refuse, the school district should give you written reasons. If referred for a full evaluation, you will be asked to sign a consent form. The full evaluation must be done within 60 business days after they received your written consent. The school district will also ask your consent to conduct a reevaluation every 3 years after the first evaluation. A new evaluation can be done sooner if it is needed.

Who is considered a parent for special education purposes?

All of the following are considered parents for special education purposes: a biological or adoptive parent of a child; a foster parent; a guardian generally authorized to act as the student's parent, or authorized to make educational decisions for the student, but not the state if the student is a ward of the state; an individual acting in the place of a biological or adoptive parent with whom the student lives, or an individual who is legally responsible for the student's welfare; or a surrogate parent who has been appointed in accordance with law.

What are Surrogate Parents within Educational System?

Surrogate parent means a person appointed by a school district to represent a child with a disability who has or may need special education

services. This person may not be receiving public funds to educate or care for the child.

When is a Surrogate parent appointed?

A surrogate parent is appointed for a child when:

- No parent can be identified;
- The public agency, after reasonable efforts, cannot locate a parent;
- The child is a ward of the State under the laws of that State; or
- The child is an unaccompanied homeless youth.

What is an IEP?

An IEP is an Individualized Education Program. It is developed by the IEP Team to meet the child needs after considering the special education evaluation, the child's disability, and related service needs. The IEP can include provisions for the type of classroom placement and related service such as speech therapy, occupational therapy, counseling, etc. The IEP is developed at a scheduled meeting with school officials which must include you, possibly the child and anyone else who can assist in developing an appropriate plan. IEPs must be reviewed every year. You or the school can request a new IEP meeting at any time if changes are needed.

If the child is already eligible for Special Education when they come to live with you, be sure to inform the school immediately when you enroll them. If you have a copy of the IEP or the evaluation, provide a copy to the school but keep a copy for your records.

For Further Information on Special Education See:

https://www.louisianabelieves.com/docs/default-source/academics/louisiana's-educational-rights-of-children-with-disabilities.pdf?sfvrsn=8e7ffce2_17

What is a 504 accommodation?

A child may be eligible for 504 accommodations, if the student has a recognizable physical or mental impairment that affects one or more major life activities or major bodily functions, and the impairment is substantially limiting compared to the general student population. The major life activity can include: self-care, manual tasks, walking, seeing, speaking, sitting, thinking, learning, breathing, interacting with others, working, reading, standing, lifting, bending, concentrating.

Examples of accommodations in 504 plans include:

- Preferential seating;
- Extended time on tests and assignments;
- Reduced homework or classwork;
- Verbal, visual, or technology aids;
- Modified textbooks or audio-video materials;
- Behavior management support;
- Adjusted class schedules or grading;
- Verbal testing;
- Excused lateness, absence, or missed classwork;
- Preapproved nurse's office visits and accompaniment to visits; and,
- Occupational or physical therapy.

What is the difference between an IEP and a 504 plan?

A 504 accommodations plan is slightly different from an IEP. A student with an IEP required by the Individuals with Disabilities Education Act (IDEA 2004) receives special education and related services in a regular or more restrictive educational setting, depending on the student's needs. The main difference is that a 504 plan outlines the necessary modifications to a student's regular education program in a regular classroom setting. Both are implemented, monitored, and delivered by classroom teachers and, if necessary, additional school support staff.

Also, informed parental consent for services and involvement is required for an IEP, but not for a 504 plan. Full parental participation in the 504 plan process, however, is important for the student's academic success.

It's important to note that students with IEPs are also entitled to the additional protections and services covered by 504 accommodations. Students with IEPs might benefit from 504 accommodations, for example, if they're moving from a special education setting to a regular classroom.

Can a child get additional services if they fail the LEAP test?

When a child has not achieved basic or approaching basic on the Louisiana Educational Assessment Program (LEAP) testing in at least two core subjects, they may be eligible for an Individual Academic Improvement Plan. This plan will provide for interventions that will assist the child in achieving basic in the core subjects. These no cost interventions may include enrollment in summer school, additional in-school support, guaranteed access to a tier 1/ high quality curriculum, or strategic classroom

placement. The plan should be developed with your and the child's participation.

Will the child be considered homeless for educational purposes?

They may be considered homeless if they are only residing with you on a temporary basis and have no permanent address. They may also be considered homeless if they are residing with you while in the custody of DCF. In both instances, the school system is obligated to try to keep the child in their original school. All school systems have a coordinator for homeless students.

How are the child's school records transferred?

The principal of the child's original school is obligated to transfer all records to the new school within 10 school days of a written request from the new school.





Health Care

Who can give consent for health care?

If a parent is not available, Louisiana law allows someone who is caring for the child as a parent would, such as a kinship caregiver to give consent for medical decisions.

Interestingly, Louisiana allows minors to consent to their own medical care without telling their parents. This includes care for pregnancy and childbirth, and sexually transmitted infections. There are special rules about abortion and sterilization. The statute does not set a lower limit on the age of minor who may consent, and there is no case law that sets a minimum age of consent. Physicians are protected from liability for relying on the consent of a minor.

If the child is in the custody of the Department of Child and Family Services (DCFS), as the child's caregiver, you should consult with the child's worker or supervisor regarding medical care and decisions.

Am I responsible for the child's medical expenses?

Yes, kinship caregivers are responsible for the child's medical expenses. However, many children in kinship care are eligible for medical insurance through either Medicaid or the Children's Health Insurance Program (CHIP).

If the child is in the custody of DCFS, the child is eligible for health coverage through Medicaid.

Who can apply for Medicaid for the child?

The following people can apply for Medicaid for a child:

Parent;

Someone who has been given court ordered custody of the child;

Someone who has claimed the child on their income tax; or,

Anyone acting for the applicant.

If the child in your care is in the custody of the DCFS, they will provide you with a Medicaid card.

How do I apply for Medicaid or LACHIP?

You have several options to apply for Medicaid or LACHIP for a child in your care.

You can apply online through the Louisiana Medicaid Online Application Center, at [Healthcare.gov](https://www.healthcare.gov), or [ldh.la.gov](https://www.ldh.la.gov) or www.benefits.gov;

You can apply over the phone, toll-free. The number is 1-888-342-6207;

You can apply in person at a Medicaid application center; or,

You can apply by mail or fax.

Can I apply for WIC benefits?

WIC benefits are available for pregnant women or children under age 5 who meet income and residential requirements. WIC can provide regular health screenings for the child and vouchers for certain foods. If the child is enrolled in Medicaid or you are receiving SNAP benefits, you are eligible for WIC for the child. Apply online at www.louisianawic.org or call 1800251BABY.

Can I put the child I am caring for on my health insurance?

You should check with your health insurance company to see what documentation you need to put the child on your insurance.

Where can I find health services or health care for the child?

Typically if the child has Medicaid or other health insurance, you may secure treatment from a health care provider of your choice who accepts those specific insurances. If the child is not yet covered by any insurance, you should apply for Medicaid or CHIP.

If the child is in DCFS custody, the child will be enrolled in a specific health care plan. Contact the child's worker to find out where non-emergent medical services can be received. If it is an emergency secure prompt medical treatment at a local hospital or health care facility.

Who can the doctor to talk to and who can see the child's medical records?

Generally, both the federal (HIPPA) and the state laws say that a parent or a person caring for a child, such as a Kinship Caregiver, can receive information from a health care provider. However, there are some exceptions

to these laws. First, in Louisiana since a minor can consent to their own treatment and they do so, the federal law says that the minor has to consent to any disclosure of their health information. Second, whoever is appointed by a court to direct the child's health care must give consent for the disclosure. Third, if the parent or caregiver agrees to a confidential relationship between the child and the caregiver, then the provider may not disclose any information.



Mental / Behavioral Health / Substance Abuse

Where To Begin If you think Mental Health Treatment is needed?

If there is a life threatening situation, always call 911.

If the child is Medicaid eligible, for non-emergent services, call Mental Health Services at 1-844-677-7553 (Hearing Loss: 1-800-846-5277) or visit www.louisianahealthconnect.com.

For crisis support call 1-844-677-7553.

If covered under private health insurance, contact the health insurance company and/or consult with the child's pediatrician or physician.

For information on state services visit www.ldh.la.gov/Office of Behavioral Health-Mental Health Services.

Who can consent to voluntary treatment?

The Louisiana Mental Health Law for children says that a child can be admitted to a treatment facility by their parent or tutor, or if those people are absent by a caretaker. A tutor is a person who is legally responsible for caring for a minor child and has been appointed by a court to be the child's tutor. (See Tutorship Fact Sheet). Caretaker is defined as a person who is legally obligated to secure adequate care for the child. This person could be a parent, tutor, guardian, legal custodian, foster parent or other person providing a residence for a child.

In other words, if the parent is not present and a child is at least living with a person, that person can consent to mental health treatment for a child.

Sixteen (16) and Seventeen (17) year olds (Older Teens) can consent to their own mental health treatment. For consent for other types of health care see the Health Care Legal Fact Sheet.

Does this include outpatient treatment?

The law does not make a clear distinction between inpatient and outpatient treatment. Outpatient clinics are included in the definition of treatment facilities. Most outpatient programs allow caretakers to consent to treatment. Under the law, older teens can consent to their outpatient treatment. Outpatient programs usually require caretakers to also consent.

How can involuntary treatment be obtained?

If the child is not willing to go for an evaluation, an Order for Protective Custody (OPC) can be obtained. You would go to the coroner's office or district judge where the child lives. It is usually done through the coroner. You must fill out an affidavit stating that the child is a danger to himself or others or gravely disabled and the child is unwilling to go to the evaluation. Once signed by the coroner or judge, it can be taken to the police who will pick up the child and bring them to the treatment facility.

If it is determined that treatment is necessary, the parent or tutor or in their absence the caretaker can sign the child into the treatment facility voluntarily. However, if the treatment is refused by the parent or Older Teens, it cannot be overridden by the caretaker. The doctor would have to initiate a Physician's Emergency Certificate followed by a Coroner's Emergency Certificate. These certificates are only good for 15 days from the date of the first certificate. After that time expires, a Petition for Judicial Commitment must be filed in the court. If the judge finds after a hearing that the child is a danger to himself, others or gravely disabled, the judge can judicially commit the child to an appropriate treatment facility. It will then be up to the doctor or the judge as to when the child is discharged

Will Judicial Commitment get a child treatment?

Not necessarily. If the facility believes that the child is ready for discharge, they cannot be forced to keep the child.

Who can object to the treatment?

Parent, tutor, caretaker or older teen may object to voluntary treatment. If the facility wishes to keep the child, they would have to start the involuntary procedures within 72 hours.

With whom can the treatment facility communicate?

If the child is admitted voluntarily, the treatment facility is required to communicate on a regular basis with the parent or guardian. If there is an occurrence where the child's safety is at risk, then the parent or guardian must be notified within 2 hours. If the child is not admitted voluntarily, there is no requirement for regular

communication with the parent. However, that does not prevent the facility from communicating with the parent.

Parents or tutors are permitted access to the child's medical record at any time whether or not the child is admitted voluntarily.

Who is entitled to legal representation in mental health matters?

Parents, tutors and caretakers are not entitled to legal representation in mental health matters. However, they may hire an attorney. Children are entitled to legal representation from the Mental Health Advocacy Service. It is the obligation of these attorneys to represent the wishes of the child.



Social Security

How does a child become eligible for Social Security Benefits?

1. Child eligibility through parents' Social Security

A child is entitled to child's insurance benefits on the Social Security record of a parent if the following conditions are met:

- An application for child's insurance benefits is filed;

- The child is (or was) dependent upon the parent;

- The child is not married;

- The child meets any of the following conditions:

 - Is under age 18;

 - Is age 18-19 and a full-time elementary or secondary school student; or,

 - Is age 18 or older and under a disability (which must have begun before age 22); and,

- The parent meets any of the following conditions:

 - Is entitled to disability insurance benefits;

 - Is entitled to retirement insurance benefits; or,

 - Died and was either fully or currently insured at the time of death.

2. Child eligibility through grandparent or step-grandparent

First, a child can receive benefits based upon the grandparent's or step-grandparent's eligibility if the grandparent or step-grandparent is not yet receiving and all of the following conditions are met:

- Child must live with grandparent at least six months before the grandparent is eligible for benefits and be a dependent of the grandparents;

- Grandparent must be the caregiver;

- Grandparent must be eligible for social security benefits; and,

- Parents must be deceased or disabled.

Second, a child can receive benefits based on the grandparent's or step-grandparent's eligibility if the grandparent or step-grandparent, adopts the child.

The child's insurance benefit payments from a parent or a grandparent end when:

- The child dies;

- The child reaches age 18 and is neither disabled nor a full-time student;

- If your child is 18 and a student at an elementary or secondary school, the benefits will end at graduation or two months after their 19th birthday;

- If your child is 18 and disabled, benefits continue but the disability must have begun before age 22;

The child marries with some exceptions; or,
The child's parent, grandparent or step-grandparent is no longer entitled to disability benefits, unless the entitlement ended because the parent, grandparent or step-grandparent became entitled to retirement benefits or died.

The child must be a citizen or a legal permanent resident

Second, the child's income and resources must fall within the eligibility limits based on:

You must apply for any other benefits for which the child may be eligible such as veterans' compensation and pensions, workers' compensation payments, other Social Security benefits and unemployment insurance benefits, etc.

Social Security considers a child's income and resources in determining benefits. It also considers the income and resources of family members living in the child's household, under its "deeming rules."

If a child's income and resources, or the income and resources of family members living in the child's household, are more than the amount allowed, Social Security will deny the child's application for SSI payments. However, your home, your household goods, a car, essential business or trade property, life insurance, disaster relief assistance, housing assistance, tax refunds, gifts to children with life threatening conditions, and children's college savings and other categories are all excluded from any resource calculations. Other resources may have to be agreed to be disposed of within certain time limits in order to qualify for benefits.

SSI disability reviews after approval:

Reviews for Children under age 18

Once a child starts receiving SSI, the law requires that Social Security review the child's medical condition from time to time to verify that the child is still disabled. This review must be done at least every three years for children younger than age 18 whose conditions are expected to improve; and by age 1 for babies who

3. Eligibility as a disabled child of a low income family

Supplemental Security Income or SSI is the most common way that children with a disability receive benefits from Social Security. A child younger than age 18 can qualify if they meet Social Security's definition of disability for children, and if his or her income and resources fall within the eligibility limits. It is a two part test.

First, in order to be considered disabled and receive SSI a child must meet the following requirements:

The child may be working but cannot be earning over a certain amount. This amount depends on the disability and the amount changes every year and can be found at www.ssa.gov. If the child is working and earning that much money, they will find that your child is not disabled;

The child must have a physical or mental condition, or a combination of conditions, that results in "marked and severe functional limitations." This means that the condition(s) must very seriously limit your child's activities;

The child's condition(s) must have lasted, or be expected to last, at least 12 months; or must be expected to result in death; and,

are getting SSI payments because of their low birth weight, unless they determine their medical condition is not expected to improve by their first birthday and they schedule the review for a later date.

Social Security will perform a disability review even if a child's condition is not expected to improve. When they do a review, they will need to see evidence that the child is and has been receiving treatment that is considered medically necessary for your child's medical condition.

Reviews for Children age 18 and older

For disability purposes in the SSI program, a child becomes an adult at age 18, requiring different medical and non-medical rules when deciding if an adult can get SSI disability payments. For example, Social Security does not count the income and resources of family members when deciding whether an adult meets the financial limits for SSI. They count only the adult's income and resources.

If a child is already receiving SSI payments, Social Security must review the child's medical condition when the child turns age 18. They usually do this review during the one-year period that begins on the child's 18th birthday. They will use the adult disability rules to decide whether your 18-year-old is disabled. The adult disability rules are very different from the standards for children.

If the child was not eligible for SSI before his or her 18th birthday because the parents, grandparents or other caregivers had too much income or resources, they may become eligible for SSI at age 18.

How do I apply for Social Security Benefits?

You can apply for SSI payments or Social Security Disability Insurance (SSDI) benefits for your child by calling Social Security toll-free at 1-800-772-1213 or by visiting your local Social Security office or on line at www.ssa.gov. No matter which way you apply for a child in your kinship care, you will have to make an appointment at the Social Security office. Social Security will help you determine whether or not you should apply for SSI or SSDI.

What do I need to bring with me?

Documents

If you are applying for SSI payments for the child, you should have his or her Social Security number and birth certificate with you. If you are applying for SSDI benefits for the child based on your own earnings record, please have your own Social Security number with you, or the Social Security number of the retired, disabled, or deceased parent on whose record the SSDI claim is being filed, in addition to the child's Social Security number and birth certificate. If you are applying because of the death of a parent, you may need a death certificate. You will also need to bring any documentation showing that the child is in your custody.

Medical and Educational Information

It is helpful if you tell Social Security as much as possible about the child's medical condition. Make a list of all the child's doctors and hospitals, the dates the child's appointments and hospital admissions and medicines the child takes. Bring any medical records you have.

You don't need to request information from the child's doctors. Social Security will contact them directly for reports or information that is needed to make a decision about your child's disability.

However, if you have any medical records, reports or information, you should bring them with you.

Social Security also will ask you to describe how the child's disability affects his or her ability to perform daily activities. In addition, they will ask for the names of teachers, special education or intervention providers, day care providers, and family members who can provide information about how the child functions. If you have school records, you should bring them to the interview.

Income Information

If your child is younger than age 18 and applying for SSI, you must provide records that show your income and resources, as well as those of the child.

Whether the potential payee is in a position to know of and look after the needs of the beneficiary.

What is a representative payee?

Generally, if a beneficiary is under age 18, Social Security will pay benefits to a representative payee.

Before selecting a representative payee, Social Security will perform a background investigation, usually including a face-to-face interview. In selecting a payee Social Security tries to select the person, agency, organization or institution that will best serve the interest of the beneficiary. In making their selection they consider:

- The relationship of the person to the beneficiary;
- The amount of interest that the person shows in the beneficiary;
- Any legal authority the person, agency, organization or institution has to act on behalf of the beneficiary including whether or not the person has custody;
- Whether the potential payee has custody of the beneficiary; and,



Comparison of Custodial Arrangements

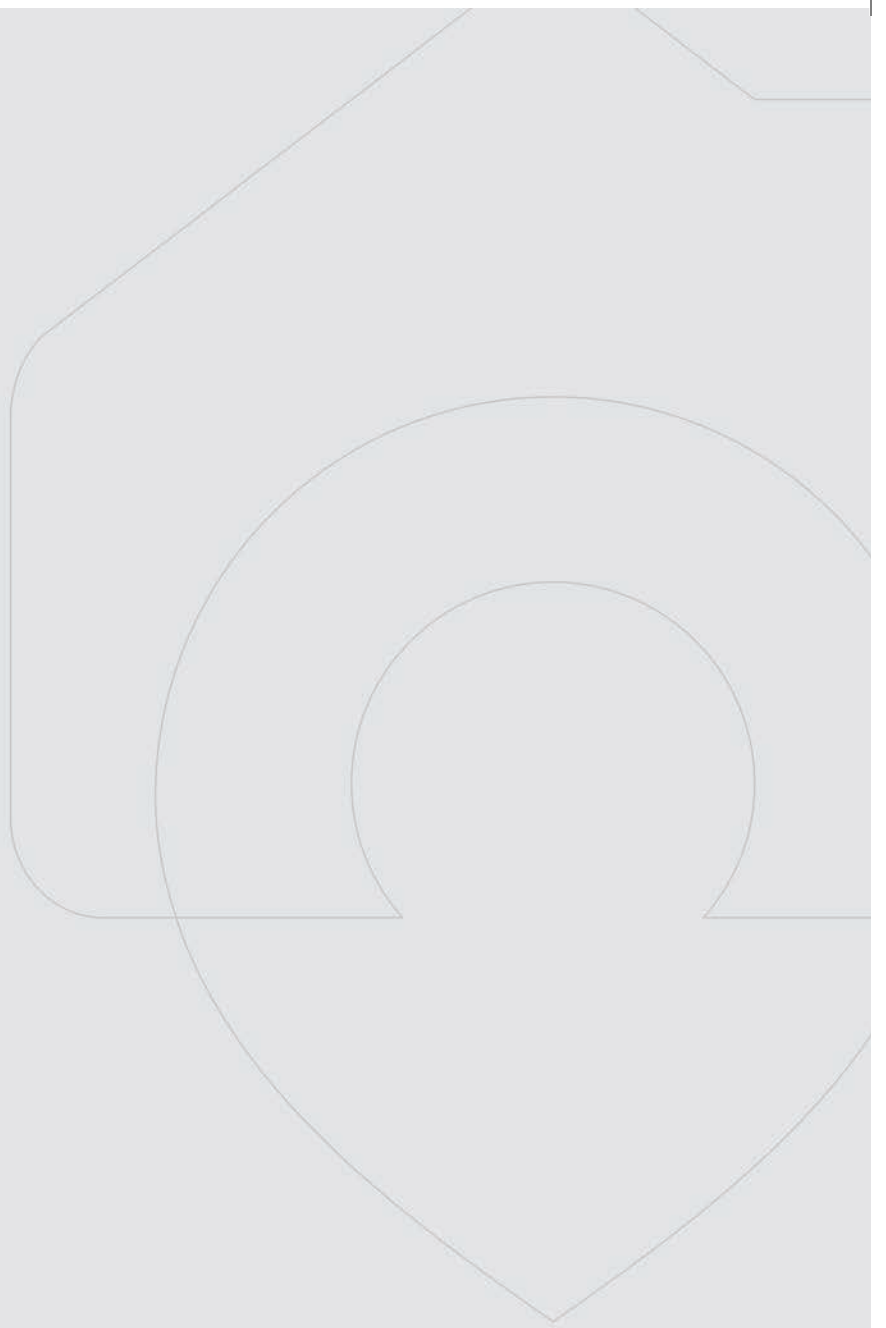
Legal Arrangements	Procedure	Authority
Non-Legal Custodian Affidavit	Form signed by Person Caring for the child	Limited medical and education decisions but not always accepted
Provisional Custody By Mandate	Form signed by parent in Front of a Notary	Full decision making but not always accepted by the schools
Voluntary Transfer Of Custody	Petition filed in Court with the cooperation of the parent	Full decision making
Child in Need of Care Kinship Custody	Petition filed with the court and the court must find abuse or neglect	Full decision making
Child in Need of Care Foster Care	Petition filed with the court and the court must find abuse or neglect	State retains ultimate decision making
Child in Need of Care Guardianship	Petition filed with the court and the court must find abuse or neglect	Full decision making
Adoption	Petition filed with the Court. Parents right must be surrendered or terminated	Full decision making
Non-Parental Custody	Petition filed with the court and the court must find that parental custody will substantially harm child and non-parent can provide a stable home.	Decision making is based on the court's order
Tutorship	Petition filed with court to determine who is legally responsible for the child and the child's finances.	Decision making is based on the court's order

¹ Low income families can apply for financial assistance such as SNAP (food stamps), FITAP, etc. at www.dcf.la.gov/familysupport

² Must be a blood relative and meet income guidelines. Apply at www.dcf.la.gov/familysupport/kcsp

Security & Stability	Financial Assistance ¹	Kinship Resources
No Protection	Kinship Subsidy ²	Kinship Navigator; DCFS Kinship Programs
Only good for 1 year and can be revoked at any time during the year	Kinship Subsidy ²	Kinship Navigator; DCFS Kinship Programs
Court ordered protection and can only be changed by the court.	Kinship Subsidy ²	Kinship Navigator; DCFS Kinship Programs
Court ordered protection and can only be changed by the court.	No foster care payment but may receive Kinship Subsidy	Kinship Navigator; DCFS Kinship Programs
Court ordered protection for legal custody but DCFS can determine the child's placement.	Foster Care Payments ³	Kinship Navigator; DCFS Kinship Programs; DCFS Foster Care Programs and Supports
Court ordered protection and can only be changed by the court.	May be eligible for Guardianship Subsidy	Kinship Navigator; DCFS Kinship Programs
Court ordered protection and can only be changed by the court.	May be eligible for Adoption Subsidy	
Court ordered protection and can only be changed by the court.	Kinship Subsidy ² and any support ordered by the court	Kinship Navigator; DCFS Kinship Programs
Court ordered protection and can only be changed by the court.	Kinship Subsidy ² and any support ordered by the court	Kinship Navigator; DCFS Kinship Programs

³ Must be a DCFS certified foster home





LOUISIANA
**KINSHIP
NAVIGATOR**



Department of
**Children &
Family Services**

Building a Stronger Louisiana

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