[Cite as *State ex rel. Grosso v. Boardman Local School Dist.*, 2009-Ohio-5080.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE EX REL. KATHERINE GROSSO, et al.,	)	
	)	CASE NO. 08 MA 105
RELATORS-APPELLEES,	)	
	)	
- VS -	)	O P I N I O N
	)	
BOARDMAN LOCAL SCHOOL DISTRICT, et al.,	)	
	)	
RESPONDENTS-APPELLANTS.	)	

CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas Court, Case No. 07CV3323.

JUDGMENT: Affirmed.

APPEARANCES:

For Relators-Appellees:

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JUDGES:

Hon. Joseph J. Vukovich
Hon. Gene Donofrio
Hon. Frank Celebrezze, Jr., Judge of the Eighth District Court of Appeals, Sitting by Assignment.

Dated: September 25, 2009

VUKOVICH, P.J.

¶{1} Respondents-appellants Boardman Local School District and Boardman Local School District Board of Education (collectively referred to as Boardman School District) appeal the decision of the Mahoning County Common Pleas Court granting the petition for writ of mandamus of relators-appellees State ex rel. Katherine and Anthony Grosso, as legal custodians of A.K., minor child, and A.K., minor child (collectively referred to as the Grossos). The granting of the writ ordered Boardman School District to admit A.K. to Boardman public schools and that the tuition for her education was to be charged to "Las Vegas Nevada School District." The issue raised in this appeal is whether the statutes and case law governing admission of children to public school and statutes governing how tuition for such admission must be paid support the trial court's granting of the writ of mandamus. For the following reasons, we find that they do and thus, the judgment of the trial court is affirmed.[1]

STATEMENT OF CASE AND FACTS

¶{2} In April 2007, A.K. moved from Las Vegas, Nevada to Boardman, Ohio to live with her aunt and uncle, the Grossos. At the end of June 2007, the Grossos filed a complaint for custody in the Mahoning County Juvenile Court. The complaint was not contested by either A.K.'s mother or father; in fact, A.K.'s mother agreed to the change in custody. On August 7, 2007, after conducting a hearing, the juvenile court adjudicated A.K. dependent pursuant to R.C. 2151.04 and granted legal custody of her to the Grossos. In making this order, the court also stated, "The Las Vegas Nevada School District shall bear the cost of educating the subject child/ren." 08/07/07 J.E. (Portion underlined was handwritten in by the juvenile court). The court also retained continuing jurisdiction over A.K.'s custody.

¶{3} The Grossos, whose residence is situated in Boardman School District, then sought to enroll A.K. in Boardman public schools.[2] Boardman School District refused to enroll her unless the Grossos paid tuition for A.K.'s education. As a result,

[1]This is one of two interrelated cases presently before this court.

[2]The Grossos actually reside in Canfield Township, however, where the residence is located is in Canfield Township, but it is included in the Boardman School district. Thus, the Grossos' school taxes go to Boardman, not Canfield public schools.

on September 7, 2007, the Grossos filed a petition for a writ of mandamus, motion for temporary restraining order, and petition for a permanent injunction in Mahoning County Common Pleas Court. The magistrate granted the temporary restraining order; Boardman School District was ordered to admit A.K. to Boardman public schools without charging tuition to a private individual as a precondition for her admission. 09/07/07 J.E.

¶{4} On September 19, 2007, a preliminary injunction hearing, which included the taking of testimony, was held. Following that hearing, the magistrate issued its decision denying the motion for preliminary injunction. 09/21/07 J.E. The Grossos then filed timely objections, and Boardman School District responded to those objections. The trial court held a hearing on those objections and responses, allowed additional testimony to be given and took the matter under advisement. 10/23/07 J.E. However, while the matter was being taken under advisement, the trial court reinstated the temporary restraining order that allowed the admission of A.K. to Boardman public schools without charging tuition to a private individual. 10/23/07 J.E.

¶{5} On December 19, 2007, the trial court entered a judgment on the objections to the magistrate's decision by adopting the magistrate's decision and denying the preliminary injunction. On December 28, 2007, the court added "no just reason for delay language" and stated that the order is a final appealable order.

¶{6} The Grossos timely appealed and asked this court to stay the trial court's order denying the preliminary injunction and the order dissolving the temporary restraining order. Appellate Case No. 08MA3. After considering oral arguments at the stay hearing, the trial court record, and the pertinent law, this court granted the Grossos' stay request. 01/25/08 J.E. Appellate Case No. 08MA3. Thus, we issued an injunction pending the appeal that allowed A.K. to remain in Boardman public schools without charging tuition to any private individual. 01/25/08 J.E. We then partially remanded the matter to the trial court to complete the case on its merits and held the appeal in abeyance pending the outcome of the trial court's decision. 01/25/08 J.E.

¶{7} Upon remand, Boardman School District filed an answer, and the trial court set the case for a non-oral hearing. On May 9, 2008, the trial court issued its final decision granting the petition for writ of mandamus. The trial court found that

R.C. 3313.64 was applicable to the situation at hand where a child's parents reside out-of-state, but the child is in the legal custody of a nonparent in Ohio. Further, the trial court found that A.K. resides in Boardman School District since she lives with her legal custodians, the Grossos, whose residence is in Boardman School District. Thus, it concluded that Boardman School District, pursuant to R.C. 3313.64(B)(2) was required to admit her to its schools. In regards to tuition and whether it was required to be paid by a private individual, the court held that the juvenile court had already ruled that Las Vegas Nevada School District was to bear the costs of her education and thus, res judicata applied. Boardman School District timely appeals from that decision.

ASSIGNMENT OF ERROR

¶{8} "THE TRIAL COURT ERRED WHEN IT GRANTED MANDAMUS TO THE GROSSOS."

¶{9} Mandamus is an extraordinary remedy, and in order to be entitled to mandamus, the Grossos were required to establish a clear legal right to the relief prayed for, a corresponding clear legal duty on the part of Boardman School District to perform the act requested, and that there was no plain and adequate remedy in the ordinary course of law. *State ex rel. Heffelfinger v. Brunner,* 116 Ohio St.3d 172, 2007-Ohio-5838, ¶13.

¶{10} We will begin with the first two requirements, a legal right for A.K. to be admitted into Boardman public schools without charging a private individual tuition, and the legal duty of Boardman School District to perform that duty. As stated above, in this case, A.K.'s parents are not residents of the State of Ohio; they live in Las Vegas, Nevada. Legal custody of A.K. was granted to her aunt and uncle, the Grossos, who reside in Boardman School District. With these facts in mind, we must determine whether the sought after legal rights and legal duties are present here.

¶{11} The trial court determined, by applying R.C. 3313.64, that A.K. had a legal right to be admitted to Boardman public schools without requiring the Grossos to pay tuition and that Boardman School District had the corresponding legal duty to allow her admission without charging the Grossos tuition. Boardman School District finds fault with the trial court's application of R.C. 3313.64 for determining that A.K. is entitled to admission and that a private individual cannot be liable for her tuition costs. It contends that R.C. 3313.64 is not applicable to pupils whose parents reside out-of-

state. Furthermore, it asserts that R.C 3327.06 dictates that tuition can be charged to an individual and thus provides a basis for charging the Grossos tuition for A.K.

¶{12} Our analysis will begin with R.C. 3313.64 and its dictates.

¶{13} R.C. 3313.64(B) is the statute governing the school district in which a child must be admitted. It states:

¶{14} "(B) Except as otherwise provided in section 3321.01 of the Revised Code for admittance to kindergarten and first grade, a child who is at least five but under twenty-two years of age and any preschool child with a disability shall be admitted to school as provided in this division.

¶{15} "(1) A child shall be admitted to the schools of the school district in which the child's parent resides.

¶{16} "(2) A child who does not reside in the district where the child's parent resides shall be admitted to the schools of the district in which the child resides if any of the following applies:

¶{17} "(a) The child is in the legal or permanent custody of a government agency or a person other than the child's natural or adoptive parent.

¶{18} "(b) The child resides in a home.

¶{19} "(c) The child requires special education.

¶{20} "(3) A child who is not entitled under division (B)(2) of this section to be admitted to the schools of the district where the child resides and who is residing with a resident of this state with whom the child has been placed for adoption shall be admitted to the schools of the district where the child resides unless either of the following applies:

¶{21} "(a) The placement for adoption has been terminated.

¶{22} "(b) Another school district is required to admit the child under division (B)(1) of this section."

¶{23} A.K. was not being admitted into kindergarten or first grade, thus the exceptions in R.C. 3321.01 did not apply to her and furthermore, she was between the ages of 5 and 22 at the time she requested admission into Boardman public schools. At the time of the filing of the petition for mandamus, she was 16 years of age and admitted into the tenth grade. (09/19/07 Tr. 29). Thus, she met the requirements for section (B) to apply to her.

¶{24} Out of the three subsections in (B), subsection (3) clearly did not apply to A.K. because that subsection addresses the situation where the child is being adopted. In this instance, there were and are no proceedings where the Grossos had sought or seek to adopt A.K. In fact, Katherine's testimony at the preliminary injunction hearing clearly indicated that she and her husband do not wish to adopt A.K.; Katherine did not think her sister should be stripped of her parental rights. (Tr. 50).

¶{25} That leaves us with subsections (1) and (2). Subsection (1) indicates that the school district in which the parent resides is where the child must be admitted to school. If applicable, that would mean that the school district in Las Vegas, Nevada where her mother resides is the district A.K. must attend. One might draw the conclusion that this indicates that Boardman School District is not required to admit her. However, when subsection (2) is looked at, Boardman School District must admit her.

¶{26} Neither subsection (2)(b) or (c) apply to A.K. because she does not require special education and she does not reside in a foster or group home. However, subsection (2)(a) indicates that when a child does not reside in the school district where his/her parent resides, the child shall be admitted to the schools of the district where the child resides if the child is in the legal custody of a person other than the child's parent.

¶{27} This described situation fits precisely with the situation presented to this court. Nothing in section (B) indicates that it only applies to students whose parents reside in the state of Ohio. Thus, R.C. 3313.64(B) provides a basis for A.K.'s admission to Boardman public schools.

¶{28} As for tuition, the first part of section (C) of R.C. 3313.64 states that a school district cannot charge tuition for children admitted to its school under division (B)(1) or (3). However, for a child admitted under (B)(2), which as discussed above was the section applicable to A.K. for admission into Boardman School District, tuition is required to be paid in different ways depending on the situation of the child; the situations are enumerated in (C)(1), (2) and (3). Subsections (1) and (3) are not applicable here since subsection (1) deals with a child receiving special education and subsection (3) deals with a child living in a group or foster home. Subsection (2),

however, is applicable because it deals with a child not receiving special education who is in the legal custody of a person other than the child's parent, i.e. A.K.'s situation. This subsection and its subparts provide:

¶{29} "(2) For a child that does not receive special education in accordance with Chapter 3323 of the Revised Code, except as otherwise provided in division (C)(2)(d) of this section, if the child is in the permanent or legal custody of a government agency or person other than the child's parent, tuition shall be paid by:

¶{30} "(a) **The district** in which the child's parent resided at the time the court removed the child from home or at the time the court vested legal or permanent custody of the child in the person or government agency, whichever occurred first;

¶{31} "(b) If the parent's residence at the time the court removed the child from home or placed the child in the legal or permanent custody of the person or government agency is unknown, **tuition shall be paid by the district** in which the child resided at the time the child was removed from home or placed in legal or permanent custody, whichever occurred first;

¶{32} "(c) If a school district cannot be established under division (C)(2)(a) or (b) of this section, **tuition shall be paid by the district** determined as required by section 2151.362 of the Revised Code by the court at the time it vests custody of the child in the person or government agency;

¶{33} "(d) If at the time the court removed the child from home or vested legal or permanent custody of the child in the person or government agency, whichever occurred first, one parent was in a residential or correctional facility or a juvenile residential placement and the other parent, if living and not in such a facility or placement, was not known to reside in this state, **tuition shall be paid by the district** determined under division (D) of section 3313.65 of the Revised Code as the district required to pay any tuition while the parent was in such facility or placement;

¶{34} "(e) If the department of education has determined, pursuant to division (A)(2) of section 2151.362 of the Revised Code, that a school district other than the one named in the court's initial order, or in a prior determination of the department, is responsible to bear the cost of educating the child, **the district** so determined shall be responsible for that cost." R.C. 3313.64(C)(2)(a)-(e) (Emphasis added).

¶{35} As can be seen, each of these subparts directs that a **school district**, not a private individual, is responsible for the cost of tuition. Furthermore, as with section (B), none of the provisions indicate that they do not apply to a student whose parents do not reside in Ohio, i.e. A.K.'s situation.

¶{36} We disagree with Boardman School District's assertion that this statute is not applicable in determining whether there is a clear legal right and a corresponding legal duty. While it may be true that the legislature did not use explicit language that indicated that it was applicable to students whose parents resided out-of-state, given the language of the statute and the qualifiers the general assembly did use, we cannot find that the statute limits its application to students whose parent or parents reside in the state of Ohio.

¶{37} The legislature, if it wanted to, could have in numerous ways written the statute so that it would be limited solely to the situation where the parent resided in Ohio and custody was given to another Ohio resident. For instance, R.C. 3313.64(A)(3), which defines school as a "city, local, or exempted village school district", the word Ohio could have been added to this definition to indicate that the statute only applied to Ohio "city, local or exempted village" school districts. When the legislature defined "home" for purposes of this statute, it stated an "institution, foster home, group home or other residential facility **in this state**." R.C. 3313.64(A)(4) (Emphasis added). Thus, the legislature knew how to limit a definition to only homes that are in this state, and it similarly could have done the same for a school district. Likewise, regarding admission to a school district as is stated in R.C. 3313.64(B)(2), the legislature did not limit the right to admission to only those children who have a parent living in Ohio at the time custody was granted; there is no description of parent's residence in that subsection. Nor did the legislature add to the list of tuition sources in (C)(2) anything like: if the district in (a) through (e) is an out-of-state district, then tuition must be paid by a private person in order for the child to be admitted to the school of that district under (B)(2). As none of those options were done and there is no indication that the sections applicable to A.K. could only apply to her if her parents resided in Ohio, we cannot read such qualifiers into the statute. In other words, we cannot read into the statute that what has not been said. *Davis v. Davis*, 115 Ohio

St.3d 180, 2007-Ohio-5049, ¶13-15 (stating we cannot add words or delete words from a statute).

¶{38} Moreover, we note that the legislature in some instances in R.C. 3313.64 did in fact contemplate how tuition would be charged for out-of-state parents. For instance, in R.C. 3313.64(C)(2)(d), it deals with the situation where the child is not in the legal custody of either parent and one parent is in a residential or correctional facility and the other parent, if living, is not in a facility and is not known to reside in Ohio. That section provides that the tuition for the child of those parents shall be paid by the district determined in R.C. 3313.65(D) "as the district required to pay any tuition while the parent was in such facility or placement." Another example of the legislature contemplating a situation where the parent resides out-of-state is found in R.C. 3313.64(C)(3). This section applies to a child that is not in the permanent or legal custody of a government agent or a non-parent and who resides in a foster-like home. It states that tuition shall be paid by either: "(a) the school district in which the child's parent resides" or "(b) **If the child's parent is not a resident of this state**, the home in which the child resides." (Emphasis added). These sections show that the legislature did contemplate alternative payment methods when the parent is not a resident of Ohio. However, no such alternative payment method was provided in (C)(2).

¶{39} In addition to the above, we also find, despite Boardman School District's insistence to the contrary, R.C. 3313.64(C), not R.C. 3327.06, governs how tuition can be charged in this instance. R.C. 3327.06 is titled, "Collection of tuition; failure to collect," and according to Boardman School District, sections (B) and (C) of R.C. 3327.06 permit it to charge a private individual for tuition and if that tuition is not collected then the student is not authorized to attend. Those sections read:

¶{40} "(B) When the board of education of a city, exempted village, or local school district admits to the schools of its district any pupil who is not entitled to be admitted to the district's schools under division (B) or (F) of section 3313.64 or section 3313.645 or 3313.65 of the Revised Code for whose attendance tuition is not an obligation of the board of another district of this state, such board shall collect tuition for the attendance of such pupil from the parents or guardian of the pupil, and the amount of tuition collected shall be the amount computed in the manner prescribed by

section 3317.08 of the Revised Code. When neither the pupil nor his parents reside in this state, the amount of tuition collected shall be the amount computed in the manner prescribed by section 3317.081 or 3323.141 of the Revised Code.

¶{41} "(C) If a board admits to the schools of its districts any nonresident pupil for whose attendance tuition is not an obligation of the board of another district of this state or of a home as defined in section 3313.64 of the Revised Code and fails to collect tuition as required by division (B) of this section from the pupil's parents or guardian, the attendance of such pupil is unauthorized attendance."

¶{42} As can be seen, section (B) indicates when tuition can be collected from the parents or guardian. This can be done when a school district admits a pupil who is **not entitled to be admitted under R.C. 3313.64(B)** "for whose attendance tuition is not an obligation of the board of another district of this state." However, this section is not applicable to the situation at hand because it only applies to pupils who are **not entitled to be admitted under R.C. 3313.64(B)**. As is shown above, A.K. was entitled to be admitted under R.C. 3313.64(B). Thus, we cannot read R.C. 3327.06 to mean that the Grossos are liable for tuition to Boardman School District because A.K.'s parents reside out of state.

¶{43} Likewise, section (C) does not alter that conclusion. It appears that Boardman School District premises its argument under this section on its belief that A.K. is a "nonresident pupil" and that they have not been able to collect tuition from the Grossos or A.K.'s parents under R.C. 3327.06(B). Both premises fail and accordingly this section does not make A.K.'s attendance unauthorized or permit them to collect tuition from the Grossos. First, this section clearly states that her attendance would be unauthorized if, along with being a nonresident pupil, the school district was also unable to collect tuition as required by division (B). As explained above, Boardman School District was not permitted under division (B) to collect tuition from the Grossos or A.K.'s parents, thus, for that reason alone her attendance cannot be qualified as unauthorized.

¶{44} Furthermore, regarding her residency, the trial court found that A.K. was a resident of Boardman School District. If that finding is correct, R.C. 3327.06 is inapplicable since it applies only to nonresident pupils. The school district, however, disagrees with that finding and states that while A.K. does live with the Grossos, for

school purposes she does not "reside" within its district. In support of that contention, it asserts that "Ohio law holds that the residence of a child for school purposes is the same as the residence of her parent(s)." It also contends that the finding that A.K. was a resident was a finding that A.K. was entitled to "tuition free education."

¶{45} These arguments are unfounded. R.C. 3313.64(B)(2)(a) clearly indicates that a child can have a different residence from his/her parents and that that situation can occur when the child is in the legal custody of a person other than the child's parents. If we were to read Boardman School District's definition of residency as the same residency as the parents, subsection (B)(2) would not make sense. Thus, we must conclude that it is possible for a child to have a different residence than his/her parent(s). Furthermore, even when a child is determined to reside in a school district, like A.K., tuition can still be charged to a school district other than the one the child resides in pursuant to R.C. 3313.64(C). Therefore, a finding of residency is not an entitlement to "tuition free education."

¶{46} Thus, having concluded that she can have a different residence than her parents, we now must determine whether there was evidence to support the conclusion that A.K. was a resident of Boardman public schools. The Grossos direct this court to cases that have discussed residency for purpose of school attendance. *Board of Edn. v. Dille* (1959), 109 Ohio App. 344; *Board of Edn. v. Day* (1986), 30 O.Misc.2d 25; *In re White*, 128 Ohio App.3d 387, 390. These cases state that indications of residency are being physically present in a household for significant periods and activities such as eating, sleeping, relaxing, and receiving mail. *White*, 128 Ohio App.3d at 390. They also direct us to R.C. 2151.06, the juvenile residency statute, which states that for R.C. 2151.01 to 2151.54, a child has the same residence as his/her parents, legal guardian or custodian. Black's Law Dictionary also defines residence as "the act or fact of living in a given place for some time." Black's Law Dictionary (8th Ed.2004) 1335.

¶{47} Regardless of what definition is used, the trial court was correct in determining that A.K. resided in Boardman School District. Testimony established that she lived, slept, and ate at her aunt's and uncle's home. Accordingly, there was sufficient evidence to find that she was a resident of Boardman School District. Thus, she was not a "nonresident pupil" and R.C. 3327.06(C) was not applicable.

¶{48} Accordingly, and for all the above reasons, we find that R.C. 3327.06 is not applicable to A.K.'s situation and likewise, that statute cannot be used to find that her parents or legal custodians can be charged with her tuition. Rather, R.C. 3313.64(C)(2) controls and dictates that a district is liable for her tuition. This conclusion is supported by a 1994 Ohio Attorney General Opinion. 1994 Ohio Atty.Gen.Ops. No. 94-033.

¶{49} This opinion has a specific section which is labeled "Tuition When Parents Reside Outside Ohio." The attorney general was asked who is responsible for the payment of tuition when a child is in the legal custody of a person other than his natural or adoptive parent and the child's parents reside outside Ohio.

¶{50} The opinion states that R.C. 3313.64(C) is controlling:

¶{51} "A determination of which school district is to pay tuition pursuant to R.C. 3313.64(C)(2)(a)-(c) does not depend upon the current residence of the parents. Even if a child's parents both currently reside outside Ohio, the determination made under R.C. 3313.64(C)(2)(a)-(c) places responsibility for paying tuition first upon the district in which the parent resided when the court removed the child from his home or when the court vested legal custody in a person other than the parent, next upon the district in which the child resided at the time he was removed from his home or placed in legal custody, and finally upon the district determined by the court pursuant to R.C. 2151.[362] at the time the court vested custody of the child in a government agency or person other than his parent.

¶{52} "If neither parent resided in Ohio when the court removed the child from his home or vested legal custody in a person other than the parents, then responsibility for tuition cannot be fixed pursuant to R.C. 3313.64(C)(2)(a). If the parent's residence at the time of removal or placement in custody is known and is known to be outside the State of Ohio, then responsibility for tuition cannot be fixed pursuant to R.C. 3313.64(C)(2)(b). If responsibility for tuition cannot be fixed pursuant to R.C. 3313.64(C)(2)(a) or (b), then a court fixes it pursuant to R.C. 2151.[362], as prescribed by R.C. 3313.64(C)(2)."

¶{53} Admittedly, the statute, R.C. 3313.64, has been amended since the 1994 attorney general opinion. However, the amendments are inconsequential and do not

alter its reasoning or conclusion. Furthermore, although the attorney general's opinion is not controlling on this court, the logic used in its determination is unassailable.

¶{54} Consequently, pursuant to the plain language of R.C. 3313.64(B) and (C), we find that A.K. had a legal right to attend Boardman public schools without tuition being charged to a private individual and Boardman School District had a corresponding legal duty to admit her without charging the Grossos tuition.

¶{55} This conclusion is supported by *In re White* (1998), 128 Ohio App.3d 387, which is cited by Boardman School District. *White* reviewed the law regarding unauthorized attendance if tuition is not paid by the parents or guardians whose admission is not required, however, it also reviewed portions of R.C. 3313.64(B)(2) and stated that if the child is in the legal custody of a person other than the parent, the child must be admitted under R.C. 3313.64(B)(2). Id. at 390. It is also worthy to note that the *White* court italicized the word "district" in R.C. 3313.64(C)(2), which may be seen to emphasize that a human is not mentioned as a source for tuition. See id. at 392. Although the *White* court noted that a child under R.C. 3313.64(B)(2) is not admitted tuition free (as tuition is chargeable to some district), the court also concluded that "R.C. 3313.64(B)(2) and (C) provide the means for determining the payment of tuition." Id. at 393. The *White* court ended up holding that R.C. 3327.06 and its private tuition requirement would apply (to make the child's parent or guardian liable for tuition) *before* legal custody was granted but specified that R.C. 3313.64(B)(2) and (C) apply for determination of liability *after* legal custody is granted to a non-parent. Id. at 392-393. The court then remanded for the juvenile court to determine who is liable during what period. Thus, *White* supports the Grossos, who obtained legal custody prior to A.K.'s admission into Boardman public schools. See, also, 1983 Ohio Atty.Gen.Ops. No. 83-041 (indicating that a district not an individual is liable for tuition under R.C. 3313.64).

¶{56} In trying to dissuade this court from reaching the conclusion that there is a clear legal right for admission without charging tuition to the Grossos and a corresponding legal duty to allow admission without charging tuition to the Grossos, Boardman School District directs this court to two alleged errors that the trial court made in its opinion, which it contends shows that the trial court's decision was not

based upon sound reasoning, and also makes a policy argument as to why the cause should be reversed.

¶{57} The first argument is that the trial court erred when it stated that when a child "is placed in the legal custody of another, the parent loses any and all of parental rights." 05/09/08 J.E.

¶{58} Boardman School District is correct that this statement is not completely accurate. Legal custody does not strip the parent of all of his/her legal rights. As the Eleventh Appellate District has explained:

¶{59} "'[L]egal custody is not as drastic a remedy as permanent custody because a parent retains residual rights and has the opportunity to request the return of the children.' *In re Memic,* 11th Dist. Nos. 2006-L-049, 2006-L-050, and 2006-L-051, 2006-Ohio-6346, ¶24; *In re C.R.,* 108 Ohio St.3d 369, 2006-Ohio-1191, paragraph one of the syllabus." *In re Yates*, 11th Dist. No. 2008-G-2836, 2008-Ohio-6775, ¶31.

¶{60} However, despite the inaccuracy of the statement, it does not dictate that the decision must be reversed. As explained at length above, the plain language of R.C. 3313.64 indicates that A.K. has a legal right to attend Boardman public schools without charging tuition to the Grossos and Boardman School District had a corresponding legal duty to allow her to attend without charging tuition to the Grossos.

¶{61} The second argument is that the trial court erred when it stated that tuition was already determined by the juvenile court and thus, the issue was barred by res judicata. The school district points out that it was not a party to the juvenile court order and there is no school district named "Las Vegas Nevada School District." As such, it contends it was unfair to hold that res judicata applies.

¶{62} In the original custody order, the juvenile court did state that "Las Vegas Nevada School District" was to be charged with her tuition. It is undisputed that prior to A.K. moving in with the Grossos, she was enrolled in Clark County Schools in Las Vegas, Nevada. The original juvenile court custody order was altered after the trial court granted the writ of mandamus; the court changed the district to be charged with A.K.'s tuition from "Las Vegas Nevada School District" to "Clark County School District of the State of Nevada." 08/27/08 J.E. Thus, any argument as to no school by the name of "Las Vegas Nevada School District" has been corrected.

¶{63} In regards to any remaining viable arguments that the finding of res judicata was incorrect, those arguments do not provide grounds for reversal. As aforementioned, nothing in R.C. 3313.64 makes A.K.'s admission conditioned on the collection of tuition. The statute clearly dictates how tuition should be determined and that it is a district liable for the cost of the tuition, not a private individual. Furthermore, the point that Boardman School District is actually arguing is that they will not be able to collect tuition from an out-of-state district, which is its policy argument.

¶{64} That policy argument does not provide a basis for reversal. The statutes as they are written allow for the admission of A.K. without charging the Grossos or her parents tuition. They do not provide a means to collect from the Grossos when she is authorized to be admitted; rather it is a school district that is responsible to pay her cost of education. It is not the province of this court to rewrite the statute so that Boardman School District can collect tuition for A.K. from the Grossos or her parents. That is something that must be done by the legislature. Thus, any policy argument to the contrary fails. In conclusion, the first two elements of mandamus are found.

¶{65} We now turn to the third element of mandamus, that there was no adequate remedy at law. Boardman School District contends that there is an adequate remedy at law in that the Grossos could have paid the tuition and then sued Boardman School District and sought money damages for the return of the tuition price.

¶{66} In order to constitute an adequate remedy at law, the alternative must be complete, beneficial, and speedy. *State ex rel. Smith v. Cuyahoga Cty. Court of Common Pleas,* 106 Ohio St.3d 151, 2005-Ohio-4103, ¶19.

¶{67} There are only two cases in Ohio that state the words "adequate remedy at law" and also reference R.C. 3313.64. *State ex rel. Rollins v. Bd. of Edn. for Cleveland Heights-University Heights City School Dist.* (1988), 40 Ohio St.3d 123; *Henry*, 20 Ohio App.3d 185. However, neither of these cases turn on the issue of adequate remedy at law and thus offer this court no guidance.

¶{68} The argument the Grossos make to support their position that a suit for monetary damages is not an adequate remedy at law is because the monetary damages awarded years later (since civil litigation typically takes years) cannot give A.K. the public education she is entitled to. They also point to the fact that money

damages are not the point, rather, it is A.K. receiving the public education she is entitled to. Further, they state that if A.K. is kept out of Boardman public schools, the Grossos are at risk of being found in violation of the state's compulsory school attendance and truancy laws.

¶{69} The United States Supreme Court in *Brown v. Bd. of Edn.* (1954), 347 U.S. 483, 493, advised on the importance of education in our society by stating:

¶{70} "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Id.

¶{71} Given the specific facts of this case, that a lawsuit for money damages would not be speedy and the importance that this country places on education and our public education system, we find that there would be no adequate remedy at law. As such, Boardman School District's argument to the contrary is deemed meritless.

CONCLUSION

¶{72} For the foregoing reasons, the judgment of the trial court is hereby affirmed. Pursuant to the plain language of R.C. 3313.64, A.K. has a legal right to be admitted to Boardman public schools without charging tuition to the Grossos, and Boardman School District had a corresponding legal duty to allow A.K. to exercise that right. Additionally, there is no adequate remedy at law.

Donofrio, J., concurs.
Celebrezze, J., concurs.