

## DETAILED PARENT/GUARDIAN REQUIREMENTS

**Guardianship** – The term “guardian” is defined in the *School Act* to mean a guardian within the meaning of the *Family Law Act* or a personal guardian within the meaning of the *Infants Act*. For the purposes of applying Section 82 of the *School Act*, the following is an overview of how “guardian” is identified in the *Family Law Act* and “personal guardian” is identified in the *Infants Act*.

### **Family Law Act:**

- When the parents of a child are living together with the child, each parent is the child’s guardian. [Section 39(1) of the *Family Law Act*].
- After a child’s parents separate, each parent of the child is the child’s guardian, unless the parents make an agreement, or the court orders that a parent is not the child’s guardian. [Section 39(1) and (2) of the *Family Law Act*]
- A parent who has never resided with his/her child is not that child’s guardian unless one of the following applies:
  - a. The person is a parent pursuant to an agreement made before the child was conceived through assisted reproduction.
  - b. The parent and all of the child’s guardians make an agreement providing that the parent is also a guardian.
  - c. The parent regularly cares for the child. [Sections 30 and 39(3) of the *Family Law Act*]
  - d. If a child’s guardian and a person who is not the child’s guardian marry or enter into a marriage-like relationship, the person does not become a guardian of that child by reason only of the marriage or marriage-like relationship. [Section 39(4) of the *Family Law Act*].
- A person cannot become a child’s guardian by agreement except if the person is the child’s parent, or if guardianship is transferred by agreement under the *Adoption Act*, or the Child, Family and Community Service Act [Section 50 of the *Family Law Act*].

### **A Person May be Appointed as a Child’s Guardian:**

- By court order,
- In a will made in accordance with the *Wills Act* (alternatively, a guardian may be appointed by prescribed form – see section 27 of the *Family Law Act* Regulation),
- By a guardian who is facing terminal illness or permanent mental incapacity, provided the appointment is made in the prescribed form (see section 27 of the *Family Law Act* Regulation). [Sections 51, 52, 53 and 55 of the *Family Law Act*].

***Infants Act:***

If a child has no guardian, or if the appointed guardian is dead or refuses to or is incompetent to act, then a director under the *Child, Family and Community Service Act* is the personal guardian of the child. [Section 51 of the *Infants Act*].

Acceptable documents establishing proof of Guardianship are:

- Canadian Birth Certificate (naming parents)
- Foreign Birth Certificate naming parents with certified translation
- Appointed guardianship by court order valid in British Columbia
- Agreement under the *Adoption Act* or the *Child, Family and Community Service Act*
- Appointed guardianship within the *Wills Act* or under the *Family Law Act*

*SD No. 40 (New Westminster)*

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