

## Custody and Access Issues

### **In custody and access situations which parent can make educational decisions for a student?**

#### ***a) If both parents live together:***

Both parents have legal custody and instructions can be taken from either or both parents. If there is a dispute, have the parents settle it. If they don't, apply the decision that is based on the best interests of the child.

#### ***b) If the parents are separated and there is no court order or agreement concerning custody:***

Both parents continue to have legal custody of the children. Take instructions from the parent with whom the children are living.

#### ***c) If there is a custody order or agreement in place:*** *If one parent has sole custody:* the custodial parent has the right to make educational decisions.

*If both parents have joint custody:* Both parents can make decisions so clarify with the parents as early as possible how the arrangement will be working. If consent from a parent is required for an activity, the consent of one parent will be sufficient, unless board policy specifically requires otherwise.

If there is any dispute between the parents as to who has the decision-making ability with regard to the child a good rule of thumb is to take instruction from the parent with whom the children are physically residing at the point in time at which the decision takes effect. The parent who sends the child to school will be the parent who can write the note about gym class or who will be called if the child forgets to bring lunch.

### **Who has access to information about the student?**

***a) If the parent has sole or joint custody:*** The custodial parent has the same access to information about the child as any parent.

***b) If the non-custodial parent has access:***  
**Subsections 9(2) and (3) of *The Children's Law Act* provide:**

*9(2) Unless otherwise ordered by the court, a parent who is granted access to a child has the same right as the custodial parent to make inquiries and be given information concerning the health, education and welfare of the child.*

*(3) The right of a parent who is granted access described in subsection (2) is not, unless the court orders otherwise, a right to be consulted about or to participate in the making of decisions by the custodial parent.*

The school should provide the non-custodial parent who has access with information concerning the educational progress of the child, such as copies of report cards, copies of test scores or any other information that would be released in the ordinary course to all parents.

***c) If the non-custodial parent does not have access:***  
A non-custodial parent who does not have access is not entitled to receive any information about the child.

### **Does a parent with access have the right to exercise access at the school?**

A parent who has been granted access to a child does **not** have an unfettered right to show up at the school at any time and spend time with the child. If the non-custodial parent has access to the children, the access is to be arranged by the parents.

Non-custodial parents even if they have access, should not be allowed to visit with the child at school or take part in school trips without authorization from the custodial parent. This is something the school must leave to the parents to work out.

Unless there is some other reason (such as the person causing a disturbance) a non-custodial parent would be free to attend public events at the school.

*Remember: School administrators have the right to refuse entry to school property to any person who might disturb the educational environment. This includes parents who have access to the children.*

### ***How can the school tell who has custody and access?***

Assume that both parents have joint custody until the school is provided with a copy of either a court order or a written agreement between the parties that sets out who has custody and access.

A copy of the order or agreement should be kept by the school and parents should be advised to let the school know as soon as possible if the order or agreement is amended.

**What if the student doesn't want us to share the information with one or both parents?**

The personal information of a child under 18 years can be released to parents *as long as it does not interfere with the privacy rights of the child*. Privacy rights are most likely to be affected in cases where highly confidential information such as counselling notes is requested.

If a student who is mature enough to understand the situation and its implications does not want the information released the student's wishes can be respected unless it is clear it will not be in his or her best interests.

**Do we have to create reports or provide opinions or verbal information to parents involved in custody disputes?**

The school does not have to create new reports for parents or provide written answers to questions asked by parents just because they may be involved in a possible court action. The school will need to provide parents in custody situations with the same type of information as it would normally provide to all parents. This will mainly be factual reporting but can also include professional opinions. Care should be taken to make sure that the person giving an opinion does not venture outside their own areas of expertise.

**What do we do if a lawyer for one parent asks for copies of documents?**

Ask the lawyer to provide the request in writing with written permission from the parent. As long as the parent has custody or access they can have access to the information provided it doesn't interfere with the privacy rights of the child.

**What if the lawyer wants an employee to sign an affidavit?**

Caution should be exercised. In most cases it is not desirable for employees to provide evidence of this nature to one side or other in a dispute, however, there may be exceptions. It is advisable to contact legal counsel to review the request.

**What if an employee is served with a subpoena?**

There are two types of subpoenas:

- a *subpoena ad testificandum* requires someone to appear and give verbal testimony.
- a *subpoena duces tecum* is a command for a witness to appear and bring to court all documents the witness has in his or her possession that might relate to the case.

When served with a subpoena an individual must attend at the time specified unless excused either by the person serving the subpoena or by the court.

If the subpoena calls for documents it must be determined whether or not the subpoenaed employee has appropriate access to the record for court purposes. For example, school records are not "in the possession" of teachers. They belong to, and are in possession of the Board. Board policy or the Director will determine who is the appropriate person to represent the Board if the records are required.

If there has been no prior contact, it is advisable to call the lawyer who issued the subpoena. The employee should ask the lawyer about the kind of questions that he or she is likely to be asked. The lawyer can also give specific details about attending at court. It should be noted, however, that the subpoenaed employee is not obligated to talk to the lawyer before court.

It is advisable to contact legal counsel who can review the subpoena and provide information about the specifics of the court process.

NOTE: The information provided in this document should not be regarded as legal advice. If you have questions about a specific fact situation please contact your legal counsel.