



7 COMMON QUESTIONS

Involving Child Custody and Physical Placement

While the school board is generally not involved in family disputes between parents, board members should understand how district administration handles these situations.

1. What is the difference between custody and periods of physical placement?

Legal custody grants someone the right and responsibility to make major decisions concerning a child. Sole custody means that only one parent has this right and responsibility. Joint custody means this right and responsibility is generally shared equally between the parents. A court can change a parent's custody of a child via a court order.

A parent who is entitled to periods of physical placement has the right to have the child physically placed with them. During that placement, they have the right and responsibility to make routine daily decisions regarding the child's care, consistent with major decisions made by a person having legal custody. One or both parents might be entitled to periods of physical placement with a child. These periods of physical placement are formally established and modified by court order, although parents can

informally modify these periods of physical placement by mutual consent. By court order, a court can deny a parent any periods of physical placement with a child, which significantly limits that parent's rights.

2. How should districts approach family disputes?

Generally, school districts should adopt and maintain a policy of strict neutrality between parents who are involved in any court proceeding affecting the family, whether pending or completed. Some common situations in which parents ask schools to get involved include custody disputes and disputes over which parent should have periods of physical placement over a child on any given day. All such disputes should be resolved by the family or through a family court proceeding, not resolved by the school district.

3. How does the district know which parent has custody or physical placement rights?

At school registration, the district should request a copy of the most current court order that affects any parent's rights regarding the child. If, during the school year, a parent asserts that the district is not oper-

ating off the most current court order, that parent should provide a copy of the most recent court order. Although not required, districts might want to request certified copies of the court orders. It might cost money for parents to obtain certified copies, but this allows districts to be confident that the record is accurate and issued by the court (as opposed to a document that might just have been created by one family member's lawyer but was not issued by the court). If a certified copy is not provided, the district should ensure, at a minimum, that the order is signed by a judge or court commissioner.

4. In the absence of a court order, which parent's rights are superior?

If the child's birth certificate identifies both parents and neither parent provides the district with a certified copy of the most recent court order affecting the child, the district should presume that neither parent has rights superior to the other parent with respect to the child. School officials can generally rely on the permission of one parent to take any given action, such as enrolling a child in classes or granting permission for a field trip. If one parent contests the action of the other parent, the con-

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testing parent needs to provide the district with a court order granting that parent rights superior to the other with respect to the issue. Otherwise, school officials can generally move forward with the consent of one parent. Special education is one situation that is treated differently than the general rule.

Some court orders provide joint custody to parents, which grants both parents the equal right to make major decisions concerning the child. That includes the right to make educational decisions. On the other hand, some court orders will grant one parent impasse decision-making authority over specific issues (such as education), which grants that parent the right to make the decision notwithstanding any disagreement with the other parent. Sometimes, a court order may create other impasse-breaking provisions, such as granting impasse-breaking authority to a guardian ad litem (an attorney appointed by the court to protect the child's interests).

5. When does a parent lose the right to receive pupil records regarding their child?

Any parent that has periods of physical placement of a child has access to the child's pupil records (e.g., grade reports, disciplinary actions, etc.), as well as notices involving school activities and conferences. The parent is entitled to participate in all school activities that are open to parents, including visiting their child during the school day, consistent with applicable board policy and the court order awarding the



parent periods of physical placement with the child.

A parent that has been denied all periods of physical placement of a child is prohibited from accessing pupil records of the child, unless permission to access the specific pupil records is granted to that individual by a parent that is permitted to access those pupil records. The applicable court order should specifically state that a parent is denied placement, as opposed to an order that does not specifically grant placement.

Although rare, a court order might also specifically prevent a parent from accessing pupil records of a child. In this situation, the parent is prohibited from accessing them, absent the permission of a parent that is permitted to access pupil records. A parent without periods of physical placement is generally still able to attend school events that are open to the general public, unless the parent is subject to an order prohibiting the parent from being at such public events. For example, a parent might be subject to a court-issued restraining order or injunction prohibiting the parent from being at such events when the child and/or other parent are present.

6. To whom can a district release a child from school?

A district should only release a child from school during the school day to:

- A parent with sole or joint legal custody of the child, unless prohibited by court order;
- A noncustodial parent with periods of physical placement of the child during those periods of physical placement as provided for in the court order;
- Any parent as provided for by the court order;
- An emergency contact as provided on the school registration form(s); or
- Any other person with prior written approval of a parent with sole or joint legal custody of the child, unless prohibited by court order.

7. What about stepparents and grandparents?

Stepparents and grandparents often play an important role in a child's life. However, unless otherwise provided by court order, stepparents and grandparents do not have any greater right to access a child's pupil

records than a member of the general public. That said, a sole or joint legal custodian of a child can provide written consent to the district permitting a stepparent or grandparent to access that child's pupil records. An enrolling parent can also list a stepparent or grandparent as an emergency contact on the school registration form(s), which would permit the district to release the child during the school day to that step-parent or grandparent. Additionally, board policy might allow stepparents and/or grandparents to participate in school activities or visit the school, but schools should be careful in these situations to ensure that pupil records

are not disclosed to these individuals, absent appropriate consent.

■ Conclusion

School districts are often asked to "take sides" or even resolve disputes between parents. School districts should limit their involvement and remain neutral in those situations. Custody and physical placement orders often change over time, and school districts need to be able to work constructively with both of a child's parents. Additionally, only a court has the authority to make binding decisions in these sensitive situations, and it is the role of the court and law enforcement to enforce the orders. It is up to the

parents to determine whether to file motions with the court or reach out to law enforcement for assistance. In general, schools should only have to reach out to law enforcement if these family disputes lead to serious disruptions, trespassing, violence or other crimes. Hopefully, by maintaining strict neutrality in these matters, schools can limit them from escalating to such a serious level. ■

**This Legal Comment was written by Michael J. Julka and Brian P. Goodman of Boardman Clark, WASB Legal Counsel. For related articles, see Wisconsin School News: "The Impact of Court Orders and Process on Parental Rights" (Aug. 2016); "Guardianship and Parental Delegation of Authority" (Sept. 2012); and "Family Courts Actions Affecting the Rights of Parents" (July, 2005).*



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