

Dealing With Separated Families

The changing dynamics of Family Law has raised new issues for schools. We can no longer assume that requests for records, a due process hearing or afternoon pick-ups need not be challenged. Keeping up to date with the changing family dynamics of your students is vital. Such knowledge will assist you in decision making when the need arises. **It is imperative that your Administration be involved in this process.**

Plan Ahead

Request that families keep the Administration informed about family dynamics that are likely to affect the student's ability to succeed in school. This could include illness of the student or a family member, absence of a parent, custody arrangements or death.

If you are aware that a student who is enrolling is not part of an intact family, request documentation regarding parental rights, such as separation agreements and divorce decrees. It is preferable these documents are certified and are obtained from the Court that implemented them. Explain that this is a precaution to insure appropriate responses to student behavior or situations that may arise at school.

Be alert to comments from parents and students that imply or overtly reflect changing family dynamics. Bring your concerns to the Administration to ensure planned responses to unplanned situations.

Custodial Issues

Family Courts often deal with two situations;

Children of Unmarried Couples: As no marriage took place, no divorce is available. But the Court can address custodial disputes by Court Order or a Court sanctioned Agreement. If the student fits this category, you will need the document that **currently** defines the parental rights so that you may make informed decisions when the family dispute shifts to your building. In very contentious situations, this document can change. Be sure to obtain the most current one.

Children of Divorcing/Divorced Parents: As part of the interim dispute before the final Divorce Decree, the Court will issue a temporary custody decree. Once the divorce is final the Court Order will address all of the issues

raised by the couple, and that will include custody of the children. The terms of this order may differ from the temporary order. It is important, when you are dealing with a dispute that spills over into the school venue, that you have accurate and up to date information when you are called upon to make decisions. For this reason, it is good practice to obtain a certified copy from the Court to ensure accuracy.

Statutory Distinctions: Attached to this memo is a copy of the current statutory definitions of custody of a child. Before you make decisions, you should have an understanding of the parental rights and responsibilities of the student's parents.

Legal responsibility: This gives a parent the right to make educational decisions about the student. As you can see from the statute, this right may be given to both parents or it may be limited to one.

Sole legal responsibility: This parent is the only one who can make decisions. That does not always mean that the other parent can be excluded from knowing what is happening at school, particularly if the non-custodial parent has visitation rights. In such cases, the non-custodial parent has a right to request notices of everything happening at school, as well as copies of report cards and other documents. The parent may also be able to attend school functions and meetings as well.

Joint custody: Both parents can make decisions and give releases.

Restraining orders: Some parents obtain restraining orders to insure the other parent has limited contact or no contact with the child. It is important to be aware of this limitation and abide by it.

No trespass order: A school may find it necessary to obtain an NTO from local law enforcement to limit access of a parent to the school campus.

Confidentiality

A byproduct of family discord is the effort to discredit parental abilities. This frequently results in contacts to school personnel (most often teachers and guidance personnel) by parents, significant others, lawyers, therapists, to establish negative impact of the other parent on the child. **You have no authority to talk to anyone without a written release from the custodial parent!** Before you discuss a student when a parental dispute is pending, you must first determine what the rights of that parent are and obtain a release from the parent(s) who retained the customary parental rights. **You also have the right to refuse to discuss the student.** You may wish to have a witness present if a parent wishes to discuss the student with you.

Subpoenas

There are two types of subpoenas. The first demands your presence at a hearing. The second, known as a subpoena duces tecum, demands that you make records available. Neither are valid unless they are accompanied by a check for your witness fee and mileage reimbursement for the distance you will travel to court. The current witness fee is \$30 a day; mileage is calculated at the rate state employees are reimbursed.

If you are served with a subpoena duces tecum, you may also be advised that you do not need to attend court if you make the records available in advance. You may be able to provide the records if they are requested by the parent with legal custody. Alternatively, the subpoena may be intended to have you come to court with the records and then discuss the records as part of your testimony. Before you share, discuss or testify about the records, you should ask the court to grant permission to disclose information from the records or your memory as the information you share is confidential.

There are some circumstances when you may be excused from honoring a legitimate subpoena. Those circumstances include unreasonable times to comply, attendance more than 50 miles away one way, disclosure of privileged information not subject to exception, or results in undue burden. These circumstances require a petition to the Court.

Significant Others

Finally, there are occasions when a new spouse or significant other, unrelated to your student, becomes involved. Sometimes, that person takes a greater interest in the child than the natural parent. Regardless of their interest or availability, it is necessary to have a signed release in the file before you communicate with them. Even if they attend meetings with the parent, it is good practice to obtain a release for that occasion when the parent is unavailable. Without the release, the District is exposed to liability and you may violate the student's privacy rights..

Final Reminders

- Do not rely solely on parent information
- Always keep the administration informed
- Always consult with colleagues
- Always be sure of your facts

§ 664. Definitions.

As used in this subchapter:

(1) "Parental rights and responsibilities" means the rights and responsibilities related to a child's physical living arrangements, parent child contact, education, medical and dental care, religion, travel and any other matter involving a child's welfare and upbringing.

(A) "Legal responsibility" means the rights and responsibilities to determine and control various matters affecting a child's welfare and upbringing, other than routine daily care and control of the child. These matters include but are not limited to education, medical and dental care, religion and travel arrangements. Legal responsibility may be held solely or may be divided or shared.

(B) "Physical responsibility" means the rights and responsibilities to provide routine daily care and control of the child subject to the right of the other parent to have contact with the child. Physical responsibility may be held solely or may be divided or shared.

(2) "Parent child contact" means the right of a parent who does not have physical responsibility to have visitation with the child.

Added 1985, No. 181 (Adj. Sess.), § 2.

§ 665. Rights and responsibilities order; best interests of the child.

(a) In an action under this chapter the court shall make an order concerning parental rights and responsibilities of any minor child of the parties. The court may order parental rights and responsibilities to be divided or shared between the parents on such terms and conditions as serve the best interests of the child. When the parents cannot agree to divide or share parental rights and responsibilities, the court shall award parental rights and responsibilities primarily or solely to one parent.

(b) In making an order under this section, the court shall be guided by the best interests of the child, and shall consider at least the following factors:

(1) the relationship of the child with each parent and the ability and disposition of each parent to provide the child with love, affection and guidance;

(2) the ability and disposition of each parent to assure that the child receives adequate food, clothing, medical care, other material needs and a safe environment;

(3) the ability and disposition of each parent to meet the child's present and future developmental needs;

(4) the quality of the child's adjustment to the child's present housing, school and community and the potential effect of any change;

(5) the ability and disposition of each parent to foster a positive relationship and frequent and continuing contact with the other parent, including physical contact, except where contact will result in harm to the child or to a parent;

(6) the quality of the child's relationship with the primary care provider, if appropriate given the child's age and development;

(7) the relationship of the child with any other person who may significantly affect the child;

(8) the ability and disposition of the parents to communicate, cooperate with each other and make joint decisions concerning the children where parental rights and responsibilities are to be shared or divided; and

(9) evidence of abuse, as defined in section 1101 of this title, and the impact of the abuse on the child and on the relationship between the child and the abusing parent.

(c) The court shall not apply a preference for one parent over the other because of the sex of the child, the sex of a parent or the financial resources of a parent.

(d) The court may order a parent who is awarded responsibility for a certain matter involving a child's welfare to inform the other parent when a major change in that matter occurs.

(e) The jurisdiction granted by this section shall be limited by the Uniform Child Custody Jurisdiction Act, if another state has jurisdiction as provided in that act. For the purposes of interpreting that act and any other provision of law which refers to a custodial parent, including but not limited to section 2451 of Title 13, the parent with physical responsibility shall be considered the custodial parent.

Added 1985, No. 181 (Adj. Sess.), § 3; amended 1993, No. 228 (Adj. Sess.), § 6.