
Custody, Visitation and Law Guardians

Impact on Schools - An Overview

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Topics

- Custody
 - Release of Student from School
 - Release of Student Information: (FERPA)
Family Educational Rights and Privacy Act
- Visitation
- Law Guardian (Attorney for the Child)
- Sample Documents

Custody

- Legal authority to make decisions affecting a child's interest (legal custody) and the responsibility of taking care of the child (physical custody).

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Custody

- The most common arrangement is for one parent to have custody (both physical and legal) while the other parent has a right of visitation.
- But it is not uncommon for the parents to share legal custody, even though one parent has physical custody.
- The most uncommon arrangement is for the parents to share both legal and physical custody.

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Custody - Definitions

- Physical Custody: The right and obligation of a parent to have his/her child live with him/her

- Joint Physical Custody: Responsibility of taking care of the child is shared between both parents, with the child spending a substantial amount of time with each parent

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Custody - Definitions

- Legal Custody: The right and obligation to make decisions about a child's upbringing, including but not limited to schooling and medical care

- Joint Legal Custody:
 - ❖ Decision making is shared between the parents
 - ❖ Parents are required to consult and agree upon decisions of major import to the lives of their children
 - ❖ Generally encompasses medical, religious and educational issues

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Custody - Definitions

- Sole Custody: An arrangement whereby one parent has physical and legal custody of a child and the other parent has visitation rights
- Split Custody: An arrangement in the case of multiple children, awarding sole custody of one child to one parent and sole custody to another child to the other parent

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Release of Student from School

- The law presumes both parents have custody
- Can only refuse to release student to a parent if the school district has been provided with a legally binding document restricting a parent's access

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Release of Student from School

■ *PRACTICAL TIP:*

At the beginning of each year, advise all parents the school district will assume both parents have custody of the child, unless provided with a legally binding document, which clearly states each parent's status and rights

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Release of Student Information

■ The Family Educational Rights and Privacy Act (FERPA)

- Establishes parents' right of access to and control over education records related to their child; custody or other residential arrangements for the child do *not* affect these rights.
- A school district does not need the permission of the custodial parent to give access to the noncustodial parent

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Release of Student Information

■ FERPA (continued)

- District must provide separated or divorced natural parents access to their children's educational records whether or not they are a custodial or noncustodial parent, *unless* there is a legally binding document that specifically removes their rights under FERPA
- A legally binding document is a court order or other legal paper that prohibits access to education records, or removes the parent's rights to have knowledge about his/her child's education

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Release of Student Information

■ FERPA (continued)

- Where there is a separation agreement but no divorce or court order affecting custody, visitation, or support, the custodial parent has no right to deny the noncustodial parent his/her rights under FERPA

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Release of Student Information

■ Duplication of Records

- ▶ FERPA and its regulations do not require that noncustodial parents receive copies of general notices, such as PTA information or other such information sent home the children
- ▶ A school district *must* forward to a noncustodial parent; at his/her expense, all information it otherwise mails to the children's household

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Release of Student from School

■ *PRACTICAL TIP:*

Ask parents to share information; however, if requested by non-custodial parent, include multiple copies in take home folder, or identify certain document to duplicate and/or mail

In the annual FERPA notice, include a provision which outlines how the district will distribute educational records and information to separated or divorced families

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Visitation

- The right to see a child regularly, typically awarded by the court to the parent who does not have physical custody of the child

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Visitation

- *PRACTICAL TIP:*

If the school district has been notified of an agreement or order, which gives visitation rights to a parent on particular days, a student should not be released to that parent unless authorized by the visitation

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Law Guardian (Attorney for the Child)

■ Law Guardian:

- Is an appointed advocate for the child, whose interests are separate from those of either parent
- Is required to consult with and advise the child regularly concerning the course of the proceeding, maintain contact with the child so as to be aware and respond to the child's concerns and significant changes in the child's circumstances, and remain accessible to the child

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Law Guardian (Attorney for the Child)

■ Law Guardian (continued):

- Is appointed by Court Order
- May visit and have access to child during school hours
- May not be denied access to the child by the parents

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Law Guardian (Attorney for the Child)

■ *PRACTICAL TIPS:*

School personnel should work with Law Guardians to ensure visitations made during the school day are as minimally intrusive to the child's day as possible

Appropriate personnel, i.e. Guidance Counselor, should coordinate the Law Guardian's visit to bring a sense of normalcy to the visit

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Law Guardian (Attorney for the Child)

■ *PRACTICAL TIPS* (continued):

It is best for the child to be removed from a class at a pre-arranged time and let the teacher know

The Law Guardian and child should be given a private place for the visit

A counselor is usually present at the meeting so the student feels comfortable; however, a Law Guardian has the right to ask a counselor not to be present

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Law Guardian (Attorney for the Child)

■ *PRACTICAL TIPS* (continued):

If the visit is during a time when the child is scheduled for a test or other important function, ask the Law Guardian to arrange a different date/time

School districts should not contact the parents to inform them of the request for the visit

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The parents cannot deny access to the child

Sample Documents

- Judgment of Divorce
- Order of Custody and Visitation
- Order Appointing Law Guardian
- Board Policy
- FERPA (Summary of Rights)
- Separation Agreement

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QUESTIONS?



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