

UINTAH SCHOOL DISTRICT

CUSTODY ISSUES IN THE SCHOOLS

QUICK REFERENCE

This guide is intended to address custody issues between divorced, separated, or unmarried parents that may arise in a school/district. It does not address issues pertaining to students who are emancipated minors or who reside with a legal guardian or foster parent. This guidance seeks to protect both the safety of the student and the rights of parents. It also seeks to avoid placing the school/district in the middle of custody disputes. Of course, not all possible circumstances can be anticipated or addressed in this guide. School/district personnel should rely on common sense, good judgment, and the best interests of the student when implementing this guidance in any particular situation. Any questions should be directed to the principal or director of student services, who may wish to confer with the director of policy and legal services

GENERAL INFORMATION

The district presumes that both parents share legal custody and share the right to make educational decisions regarding their student. However, when a dispute arises, the parent who enrolled the student is considered by the district to have physical and legal custody of the student until a signed legal document describing the custodial arrangement is provided to the school/district. The district will also presume that there are no restrictions regarding a parent's right to be kept informed of his/her student's school progress and participate in school activities. A parent will only be prevented from participating in his/her student's education if a signed court order (e.g. divorce decree, custody order, or restraining order) specifically restricts the parent's access to the student. If restrictions are in place, the parent with legal custody must submit a signed copy of the court order describing the rights restricted. Additionally, unless there is a legal document that specifies otherwise, both natural parents have the right to:

- View the student's educational records;
- Receive school progress reports;
- Participate in parent and teacher conferences together or separately; and
- Access the student during school hours

INFORMATION ON SPECIFIC ISSUES

Custody Order and Agreements

Child custody refers to the bundle of rights, duties, and responsibilities of a parent with regard to their child. When trying to decipher custody orders and agreements, it is important to understand the various types of child custody arrangements that are possible.

The most common kinds of child custody are:

Legal Custody – Legal custody refers to the legal right and obligation to make decisions about a minor child's upbringing, including, but not limited to, medical, religious, and educational decisions. Legal

custody may be awarded to one parent (sole custody), or both parents (i.e. joint or shared legal custody). Unless indicated otherwise, joint legal custody means the decision making responsibility is shared by both parents equally (in some instances, one parent may have responsibility over one area, e.g. medical decisions, while the other parent has responsibility for another area, e.g. religious decisions).

Physical Custody – Physical custody is the term used to denote that a parent has the right to have a child live with him/her. Joint physical custody is when the child spends significant amounts of time with both parents; in this case, both parents are considered custodial parents. When the child lives primarily with one parent and has visitation with the other, generally the parent with whom the child primarily lives (the custodial parent) will have sole or primary physical custody, and the other (the noncustodial parent) will have the right to visitation/parenting time with his/her child.

Sole Custody – Sole custody refers to one parent having primary responsibility for some or all aspects of the child's life. One parent can have either sole legal custody (s/he gets to make all decisions about a minor child's upbringing), sole physical custody (the child lives exclusively or primarily with this parent), or sole legal and physical custody of a child (this parent gets to make all decisions about the minor child's upbringing and the child lives primarily with him/her).

Joint Custody – Parents who do not live together may have some type of joint custody, also called shared custody, when they share the decision-making responsibilities for, and/or physical control and custody of, their children. Joint custody can exist if the parents are divorced, separated, or no longer cohabiting, or even if they never lived together. Joint custody may be:

- Joint legal custody (where both parents have decision making responsibilities for the child);
- Joint physical custody (where the child spends a significant portion of time with each parent); or
- Joint legal and physical custody (where both parents share a decision making responsibilities for the child and the child spends significant time with each parent).

In 2001, state law began requiring divorcing parents to develop a parenting plan. The objective of the parenting plan is to outline provisions for resolution of future disputes between the parents, to allocate decision-making authority, and to make residential provisions for the child. The parenting plan may divide decision-making authority between the parents, giving one the right to make medical decisions for example, and the other the right to make educational decisions. (Utah Code Ann §§30-3- 10.7 to 10.9).

Remember, custody orders and agreements are between parents. The school/district is NOT a part of a custody order or agreement, and such documents do not legally require any action by the school/district except as otherwise required by law. Parents are expected to resolve their differences on their own or through the court, and should not rely on the school/district to enforce custody orders or agreements that restrict contact between noncustodial parents and their children. However, the school/district should cooperate with a valid custody order or agreement presented to it by a parent.

Parents should notify the police or other appropriate authorities if they have concerns about compliance with their custody orders or other agreements.

The Right to Make Educational Decisions

The school/district may presume both parents share legal custody and share the right to make educational decisions regarding their student unless a signed court order is provided that indicates otherwise. Parents may provide the school with a copy of a signed divorce decree and/or parenting plan

that outlines their child custody arrangement. If there are several court orders, the most recent signed order prevails. Any custody order or agreement provided to the school/district should be verified and maintained in the student's cumulative file.

If a parent is awarded sole custody of a student, s/he has the legal authority to make educational decisions, and the school/district may deal exclusively with that parent, except with respect to accessing student education records and making decisions pursuant to the Individual with Disabilities Education Act (IDEA).

When parents share legal custody and one parent makes a decision regarding the student (including signing a form), the school/district can accept that decision on the student's behalf; this is the same as if one or two married parents make a decision regarding a student. If the parents disagree with each other about a decision involving their student, the school/district should generally ask the parents to come back after they or the court have resolved the disagreement. However, if deemed to be in the best interest of the student, the school/district may choose to accept the decision from either one of the parents (just as the school/district may do if two married parents disagree about a decision regarding their student). As an exception to the above, a decision requiring both parents' consent must be approved by both parents if they share legal custody.

School Visits and Visitation

Typically, parents do not visit students at school during school hours, regardless of whether the parent has custody. If a school/district permits parents to visit their student during school hours, both parents should be allowed equal access to their student unless there is a specific court order prohibiting access to the student. Also, the school/district may prohibit either parent, regardless of custodial status or the language of the court order, from entering the school or otherwise participating in school-sponsored activities if s/he disrupts the educational process or his/her presence is detrimental to the health, safety, or academic learning of the student(s).

Under Utah law, court-ordered visitation/parent-time should not interrupt the student's regular school hours (Utah Code Ann §30-3-33(7)). This applies to both physical and phone visitation/parent-time.

Access to Student Education Records

Both natural parents (including a noncustodial parent) have a right to review their student's educational records. The school/district should assume that a noncustodial parent has the right to inspect or review their student's educational records unless the school/district has been provided with a signed court order specifically prohibiting such access. Asking for documentation of some sort to establish the identity of the noncustodial parent is a good idea if you are unfamiliar with that parent.

Delivery of School Information, Student Records, and Permission Slips

The school/district is not legally obligated to provide both parents with school information, student records, or permission slips sent home with the student or mailed by the school/district. Typically, only one copy of materials will be mailed by the school/district, and, in all cases, only one copy of school information, permission slips, or other such material will be sent home with the student.

School information, student records, report cards or other materials will be mailed based on the following guidelines:

- To a parent with sole legal custody.

- If there is shared legal custody, to either or both parents if that direction is provided in writing. If no such direction is provided, the school/district will mail the material to the parent who enrolled the student
- If a noncustodial parent requests duplicate mailings in writing, there is no legal requirement for the school/district to comply, and the school/district, in its sole discretion, may honor or deny such requests
- If a court order specifically requires documentation to be mailed to both parents, or a particular parent, or specifically prohibits one parent from receiving information, the court order must be complied with as directed.

Notices and Permission Forms for Special Education Students

If parents share legal custody, the Individual with Disability Education Act (IDEA) requires that notices and permission forms be sent to both parents, provided the address of the noncustodial parent is known to the school/district or can be obtained from the other parent. If only one parent has sole legal custody, the school/district will only send notices or permission forms to the parent with legal custody.

If parents share legal custody and are not in agreement regarding an IDEA decision for which parental consent is required, the school/district will accept the consent of either parent. In such cases, if the decision is subject to the due process hearing procedures of the IDEA, either parent may ask for a due process hearing. If parents share legal custody and one parent asks for a due process hearing, the school/district will continue to communicate with both parents so that both parents can participate in the hearing if they wish. If only one parent has legal custody, the school/district will treat the due process hearing procedures as not applicable to the other parent.

If parents share legal custody and do not agree regarding an IDEA decision, the school/district may, but is not required to, delay implementing the IDEA decision in order to give the parents a short period in which to resolve their differences or to have a court alter the custody arrangements.

Notification of Student Injury, Illness, or Suspension

If a noncustodial parent has made a written request, provided current contact information to the school, and there is no court order forbidding contact, a school must make reasonable efforts to notify a noncustodial parent in the event that:

- Their student is injured or becomes ill at the school during the regular school day and requires treatment at a medical facility not located on the school premises (Utah Code Ann §53A – 11-205).
- Their student is suspended, expelled, or denied admission (Utah Code Ann §53 A- I I -903).

Authority were order does not specify—

If no court order specifies parental authority over educational decisions, or provides otherwise than set out below, the District will recognize parental authority over educational decisions of divorced or legally separated parents as follows:

1. Sole physical custody: A parent who has sole physical custody of a child shall have authority:
 - a. To determine the child's home residence for school attendance purposes or the school where the child will attend;
 - b. To make educational decisions for the child if the parents disagree; and
 - c. To determine who is allowed to have access to the child during school hours and to check the child out of school.
2. Joint physical custody with unequal time: Where parents have joint physical custody, the following apply:
 - a. The parent who has physical custody the majority of the time shall have authority to determine the child's home residence for school attendance purposes or the school where the child will attend;
 - b. The parent who has physical custody the majority of the time shall have authority to make educational decisions for the child if the parents disagree; and
 - c. Both parents shall have access to the child during school hours and authority to check the child out of school.
3. Joint physical custody with equal time: Where parents have joint physical custody for equal time, the following apply:
 - a. Both parents have equal authority to determine the child's home residence for school attendance purposes or the school where the child will attend (and any disagreements must be resolved by the parents, either by agreement or by seeking court intervention);
 - b. Both parents shall have authority to make educational decisions (and any disagreements must be resolved by the parents, either by agreement or by seeking court intervention); and
 - c. Both parents shall have access to the child during school hours and authority to check the child out of school.

[Utah Code § 30-3-10.9\(5\)\(c\) \(2018\)](#)

FREQUENTLY ASKED QUESTIONS

- 1. What if a parent tells me that there is a court order prohibiting the other parent from access to the student or shows me a petition/motion that says the parent cannot have access, do I comply with that?**

No, do not rely on a parent's verbal representation that there is a court order and that s/he has the right to determine access. You must get and keep a signed copy of the court order. If it is only a copy of a petition/motion (i.e. one party's request that the court take action), it is not a final order and the matter has not been decided by the court. You cannot rely on petitions/motions or unsigned orders to determine or prohibit access.

- 2. What about a noncustodial parent checking a student out or picking them up from school?**

Until the school/district is notified otherwise, it can operate under the assumption that both parents have the same right to check the student out of school and/or pick the student up from school. However, if a custodial parent wishes to restrict a noncustodial parent from checking a student out of school, s/he has the right to do so.

Only the custodial parent(s) has the right to authorize removal of the student from school property during school hours. If the custodial parent desires that the student be removed by another individual, s/he must inform the school in writing that s/he is authorizing such party to remove the student. Such authorization shall be assumed to be generally applicable, unless the custodial parent specifies that it is limited to a specific date and time.

If a noncustodial parent seeks to remove the student from school and the custodial parent has not consented, the following steps should be followed:

- The principal or designee will meet with the noncustodial parent and, in the presence of the noncustodial parent, telephone the custodial parent and explain the request.
- If the custodial parent agrees, the student will be released and the principal should document that permission was granted orally.
- In the event the custodial parent cannot be reached, the principal may make a decision based upon all relevant information available to him/her
- If the custodial parent objects to the removal, the principal or designee should explain that the noncustodial parent cannot be permitted to remove the student from school property. Unless legal documentation provides otherwise, the principal or designee may allow a brief visit between the non-custodial parent and student, with the student remaining in the office area for the visit and then being escorted back to class after the visit. (Best practice would be to reiterate this option while the custodial parent is still on the phone, so both parents hear the same information.)
- If the principal or designee has reason to believe that a possible abduction of the student may occur at the school, or the parent is disruptive, local law enforcement officials should be immediately notified.

- 3. May a noncustodial parent enroll his/her student in school?**

Yes, when a parent is enrolling his/her student in school, it is okay to operate under the assumption that s/he has the right to enroll the student unless you are notified otherwise.

- 4. What if a noncustodial parent wants to withdraw a student from school?**

The parent granted legal custody, or the specific authority to make educational decisions for the student, determines where a student will attend school. A noncustodial parent may not withdraw a student from school without the custodial parent's permission, unless the noncustodial parent originally enrolled the student in the school.

5. What if there is a restraining order against the noncustodial parent or concern that release of information may result in harm to the student or custodial parent?

The law does not require that you provide the information immediately. In fact, you have up to 45 days under the Family Educational Rights and Privacy Act (FERPA) to provide information. You may delay providing information to the noncustodial parent until you have notified the custodial parent and allowed them sufficient time to take any action they deem necessary to prevent the noncustodial parent from getting information.

6. Do noncustodial parents have the right to attend school functions?

Yes, under Utah law (Utah Code Ann. §30-3-33(11)), a custodial parent is expected to share information with the noncustodial parent of all significant school, social, sports, and community functions in which the student is participating or being honored, and the noncustodial parent shall be entitled to attend and participate fully. If the noncustodial parent makes a written request to receive scheduling information, and there is no court order prohibiting such access, the school may choose to comply with the request.

7. Does the noncustodial parent have the right to attend and participate in parent-teacher conferences?

Yes. Unless a court order prohibits it, a noncustodial parent is welcome and encouraged to participate in parent-teacher conferences, disciplinary meetings or hearings, Individual Educational Program team meetings, and any other conference called by district personnel regarding the student's education. Occasionally, because of parental conflict, a noncustodial parent may request a separate conference. A school has no obligation under the law to arrange a separate conference to accommodate the noncustodial parent. However, a school may provide a conference time for a noncustodial parent if it chooses, though this is not always possible, especially on the elementary level where time-slots are more limited.

8. Should an administrator or a teacher write a letter of support in a custody dispute if a parent requests it of them?

No, unless you receive a subpoena requiring it. If an employee is required by subpoena to provide a letter, it should contain objective factual information limited to the student's educational experiences. Refrain from taking sides or making judgments as to which parent should have custody. Please contact the district's human resources department whenever you receive a subpoena.

9. What rights does a step-parent have?

This question has various answers for school purposes, depending on the role that step-parent may be designated to play. A step-parent could be a designated parent under IDEA or for purposes of a Section 504 plan. The natural parent can give the step-parent written permission to act in the natural parent's place—to pick up a child, attend parent/teacher conferences, look at student records, etc. Absent the natural parent's written permission, the step-parent who lives with the custodial parent has rights under FERPA consistent with the natural parent. The step-parent who

lives with the non-custodial parent must have written permission from the natural parent (the non-custodial parent) to access a student's records or make decisions about a student's records.