

Custody & Access

Custodial parents have the right to make all decisions regarding educational matters pursuant to the *Education Act* that are under the authority of “parents”, unless otherwise restricted.

Generally, unless there is an agreement or Court Order restricting the right of a custodial parent to make educational decisions (or other decisions), that custodial parent has the same right to make decisions as natural parents who have not separated from one another or their children.

Access parents have the right to access information about their child and to access their child through access visits. Access visits can be supervised or unsupervised.

Generally, access visits or opportunities by the access parent to access a child should not take place at school. However, access parents might have an arrangement (consensually or by court order) to pick up/drop off a student from school, take a student for lunch or participate in a school or classroom activity involving the student. These opportunities should be clearly articulated in a Court Order, letter of permission from the custodial parent or oral permission/direction given by the custodial parent.

Here are some situations that arise and suitable courses of action when access to records is requested:

- Spouses are living apart and there is no agreement or court order. Both parents have access to the OSR until the student is 18 or 16 or 17 and removed from the care and control of both parents.
- Lawful custody may mean there is an agreement or court order which sets out who has custody. – ACCESS of the non-custodial parent to the student must be defined in the court order before it can occur at the school. Access to student records continues unless precluded by court order.
- One parent has lawful custody and there is court-ordered access for the non-custodial parent – ACCESS is granted to the non-custodial parent. Access is according to the terms of the court order and unless access to the students at school is prescribed in the court order, or the custodial parent authorizes it, access at school may be a contravention of the court order.
- *Defacto* custody is a term that is used when a child lives primarily with one parent, but the parents have not otherwise made arrangements with respect to custody or access. Generally, by virtue of primarily living with one parent, that parent assumes custodial rights until or unless there is a Court Order or a mutual decision between the parents determining custody.
- Joint custody means that both parents have equal rights to make educational decisions. Generally, day to day direction is taken from the parent with whom the student primarily resides, and if the student resides with both parents equally or almost equally, the school should take day to day direction from the parent with whom the student was residing that day. When more significant decisions, such as suspension, expulsion, referrals for special services, special education programming (IEPs, IPRCs, Case Conferences) occur both parents should be provided with an opportunity to provide their views. In most cases, hopefully, the parents will be agreeable with one another.

But, in situations when one parent disagrees with the other parent then they need to receive a communication that the decision needs to be made by them both together and it might mean that services are not provided as a result.

- Step parents and new partners have no right to receive educational information about a student unless they formally adopt the student and become a custodial parent as a result of the adoption. The opportunity to participate in the sharing of information or in activities involving the student can be given by the custodial parent. The custodial parent would be expected to authorize the step parent's or new partner's involvement in writing or orally.
- Where a parent has access to a child, rather than custody, the parent is entitled to information about the health, education and welfare of the child under the Children's Law Reform Act.
- The Divorce Act also provides the non-custodial parent the right to access information about the child's health, education and welfare once a divorce application has commenced. The consent of a child under the age of 16 years is not required.

Principal's Best Practice: Be sure not to confuse access to records with access "to the child", otherwise known as visitation. You must ensure that a non-custodial parent, accessing records at school, for some reason, is not granted unauthorized visitation. You may wish to consider making these records available outside of school time, if at all possible.