



HOW DO CUSTODY ISSUES AFFECT YOUR RIGHTS IN THE PUBLIC SCHOOLS?

IMPORTANT: ELC's publications are intended to give you a general idea of the law. However, each situation is different. If, after reading our publications, you have questions about how the law applies to your particular situation, contact us for a referral, or contact an attorney of your choice.

If you have gone through a divorce or separation, it can affect your rights at your child's school. It can change who can sign waivers or permission slips, who can join in school functions, and who can see your child's school records.

The answer to many of these questions partly depends on whether you have "**legal custody**" and "**physical custody**" of the child. It also depends on what the court order or custody agreement says about who has the right to make education decisions and see the child's school records.

- **Legal custody** gives a parent the right to make decisions for a child. When two parents separate or divorce, they can agree to share legal custody, which is called "**joint legal custody**." This means that both parents have the right to make decisions, including educational decisions, for the child. If only one parent has legal custody, it is called "**sole legal custody**." In this case, only that parent can make decisions for the child.
- **Physical custody** controls where a child lives. When parents have "**joint physical custody**," the child lives with one parent some of the time, and the other parent some of the time. When one parent has "**sole physical custody**," the child lives with that parent all the time.

Who has the right to see a child's educational records?

Both parents usually have the right to see a child's school records and join in school activities. However, a judge can issue a court order that keeps either parent (or both parents) from seeing a child's records. For that reason, a custody agreement or court order has to clearly spell out any limits on access to school records or contact by either parent. Otherwise, a parent can see a child's records, even if the child does not live with that parent. In fact, a school will assume that both parents have the right to see a child's education records unless the school has been provided a court order or other information that says a parent can't see the records. A court order from a domestic violence proceeding can also limit a parent's right to see her child and that child's school records.

Who has the right to make educational decisions for a child?

A custody order or agreement can give only one or both parents the power to make educational decisions. Both parents also have the right if the order does not mention who has decision-making power.

Special Education Decisions

If a child is in special education, custody rights also affect who can come to Individualized Education Program (IEP) Team meetings and make special education decisions. If the parents have joint legal custody, they can both make educational decisions for a child. They can both approve or not approve an IEP or ask for a due process hearing. Only one parent has to agree with the school district's proposal before the district can take whatever action it has proposed. If the other parent does not agree with the decision, he or she has to ask for a new IEP meeting or due process hearing to try to change it. The parent who disagrees can also go to court to change the custody order so that he or she is the only person allowed to make educational decisions for the child.

If only one parent has legal custody, the other parent still has the right to know about the child's special education program and the right to sit in on IEP Team meetings, unless a custody order says he or she can't. However, only the parent with legal custody can approve or not approve an IEP and ask for a due process hearing for the child.

Where can a child of divorced or separated parents go to school?

Generally, a child has the right to go to school in the district where his or her parents live. When a child's parents are separated or divorced and the parents live in different school districts, the child goes to school where the child actually lives **most** of the time, even if the parents have joint physical custody of the child. If parents with joint legal custody split the child's time between them equally, the child can enroll in either parent's district. A custody order or agreement usually says where the child will live most of the time. However, a custody order or agreement can also say that the child will go to school in the district of the parent that the child does not live with most of the time. The school district must follow this order.

What if the child does not live with either parent?

If a child lives with an adult that is not his parent, the child has the right to go to school in the school district where the child lives with the adult, if the adult signs a statement that says that:

- The adult is supporting the child and is not being paid for caring for her
- The adult will be responsible for the child's school activities, and
- The child is living with the adult full-time, and not just for the school year.

The school district can ask the adult to provide more paperwork than just the statement. However, the school's request has to be reasonable. The adult does **NOT** have to have custody or legal guardianship of the child for the child to be able to go to school in the district where the child lives with the adult.

Can a student who splits time between parents get transportation to school from both parents' homes?

No. The right to go to school and the right to school transportation both depend on where the child lives **most** of the time, even if the child is in special education. A student who splits his or her time between both parents does not have a legal right to be transported to and from both homes. The student only has the right to be transported from the home where he or she lives most of the time. However, some school districts may be willing to transport from both homes.