

## **CUSTODY ISSUES AFFECTING PARENT & STUDENT RIGHTS IN THE PUBLIC SCHOOLS**

When parents divorce or separate, questions often arise about who controls the student's or family's rights with respect to school, such as: who can sign waivers or permission slips, who can participate in school functions, or who can have access to school records. Much of this confusion is caused by the distinction between "**legal custody**" - the right to make decisions, including educational decisions, for a child - and "**physical custody**" - which determines where a child lives.

### **Who can exercise parental rights in the school?**

Generally, both birth parents have the right to access or to control access to a child's school records, and to participate in school activities and educational decisions, **unless** there is a court order or other legally binding document that says otherwise. Therefore, a custody agreement or court order must clearly spell out any restrictions on access to school records or contact by a non-custodial parent. Otherwise, a parent will be allowed to participate in educational decisions and get access to a child's records, even if that parent does not live with the child (physical custody). 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 otherwise. A court order from a domestic violence proceeding may also limit or prevent a parent from having access to a child and that child's records.

### **What if divorced or separated parents cannot agree upon an educational decision concerning a child?**

If the custody order or agreement gives one parent the power to make educational decisions, then that parent's decisions are final. If, instead, the order gives both parents equal decision-making power, or is silent, then both parents have the right to participate in educational decisions.

If a child is in special education, custody rights also affect who is entitled to participate in IEP team meetings and make special education decisions. If the parents have **joint legal custody** (meaning they share decision-making powers), then they both have the right to make educational decisions for a child, including the ability to approve or disapprove an IEP and/or ask for a due process hearing. Since one parent's agreement with the school district's proposal will permit the district to take whatever action it has proposed, the disagreeing parent will have to request a due process hearing to resolve the dispute about the child's special education program. The disagreeing parent can also return to court to get an amendment to 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 the right to make educational decisions on behalf of the child (meaning that parent has **sole legal custody**), the non-custodial parent still has the right to information about the child's special education program and the right to attend IEP team meetings unless a custody order provides otherwise. However, only the parent with legal custody has the authority to approve or disapprove an IEP and request a due process hearing on the child's behalf.

## **What school district may a child of divorced or separated parents attend?**

By law, a child has the right to attend school in the District where his or her parents reside, assuming that they live together. When a child's parents separate or divorce, and the parents live in different school districts, questions often arise about where the child has the right to attend school. The bottom line is that the child may attend school where the child actually lives **most** of the time, even if the parents have joint physical custody of the child. Often, this will be determined by the terms of a custody order or agreement, and where that document says the child will live.

## **What if the child does not live with either parent?**

If a child lives with an adult other than his parents, the child has the right to attend school in the school district where the child lives with the adult, so long as the adult with whom he is living signs a statement that the child is living with the adult for free, that the adult will be responsible for the child's school activities, and that the child is living with the adult full-time, and not just for the school year. The school district can request that the adult provide additional documentation in support of these factors, so long as the request is reasonable. However, the adult does **NOT** have to have custody of the child or guardianship for the child to be able to attend school in the district where the child lives with the adult.

## **Are there different rules about where a child is entitled to attend school for students in special education?**

No. Pennsylvania laws concerning where a child attends school also apply to special education students. The child attends school where the child actually lives **most** of the time.

## **Can a student who lives with both parents get transportation to school from both parents' residences?**

No. Both the right to attend school and the right to school transportation depend on where the child lives **most** of the time, even if the child is in special education. As a result, a student who lives with 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 they live most of the time, although some school districts may be willing to transport from both homes.

**Funding for this brochure was provided, in part, by Pennsylvania Protection & Advocacy, Inc., pursuant to the Developmentally Disabled Assistance and Bill of Rights Act, P.L. 101-496, and the P&A for Mentally Ill Individuals Act, P.L. 99-319.**