



I) Parent Rights

- 1) When parents are living separate and apart, custody or usual care and control of the student is determined as follows:

a) Guardianship

The Family Relations Act provides that where parents are living separate and apart, the parent who usually has care and control of the child is the “guardian” of the child unless a court orders otherwise or the mother and father make a written agreement between them which provides that one of them is the sole guardian.

Section 28 of the Family Relations Act provides that:

- (1) Subject to section 28, whether or not married to each other and for so long as they live together, the mother and father of a child are joint guardians unless a tribunal of competent jurisdiction otherwise orders.
- (2) Subject to subsection (4), section 28 and section 30, where the father and mother of a child are or have been married to each other and are living separate and apart
 - a. they are joint guardians of the estate of the child; and
 - b. the one of them who usually has care and control of the child is sole guardian of the person of the child unless a tribunal of competent jurisdiction otherwise orders.
- (3) Where the father and mother of a child
 - a. have not married each other
 - b. are living separate and apart; and
 - c. have been joint guardians under subsection (1) or under the order of a tribunal or competent jurisdiction, subsection 92 applies to the father, mother and child as though the father and mother were married.
- (4) Where a tribunal of competent jurisdiction makes absolute a decree of divorce, or renders judgment granting a divorce and a certificate has been or could be issued under the Divorce Act, 1985 (Canada) stating that the marriage was dissolved, or makes an order for judicial separation or declares a marriage to be null and void, a person granted custody by order in the proceeding is sole guardian unless a tribunal of competent jurisdiction transfers custody or guardianship to another person.
- (5) Subject to section 28, where the father and mother of a child
 - a. have not been married to each other during the life of the child or 10 months prior to its birth
 - b. are living separate and apart; and

- c. do not share joint guardianship under this section or an order of a tribunal of competent jurisdiction, the mother is sole guardian unless a tribunal of competent jurisdiction otherwise orders.

Parents cannot make an agreement between them, which makes any other person a guardian without a court order.

Where parents are divorced or their marriage has been dissolved under the Divorce Act or there has been a judicial separation, the person granted custody by the order in the proceeding will be the sole guardian of the child unless the court transfers guardianship to another person.

Where a court orders that the parents have joint guardianship, both parents have the rights of a guardian.

Where the Director (ie. Ministry of Social Services through its social workers) has custody of a child under an interim order or temporary custody order under the Child, Family and Community Service Act, unless limited by court order, the Director has the rights and responsibility of a guardian and specifically, the right to make necessary decisions about the child's education. Similarly where the Director has continuing custody of a child under the Child, Family and Community Service Act the Director has the rights of a sole guardian of the child.

b) Custody

Where parents are living separate and apart "custody" is generally determined by court order or by a written agreement between the parents. A court order will take precedence over an agreement in the event there is a conflict between the two.

In the absence of a court order or written agreement, the person entitled to custody will be the person with whom the child usually resides.

Section 34 of the Family Relations Act provides that:

- (1) Subject to subsection (2), the persons who may exercise custody over a child are, where
 - a. the father and mother live together, the father and mother jointly;
 - b. the father and mother live separate and apart, the parent with whom the child usually resides;
 - c. custody rights exist under a court order, the person having those rights; and
 - d. custody rights exist under a written agreement, the person to whom those rights are given.
- (2) Where persons have conflicting claims to custody under subsection (1)
 - a. the person having custody rights under a court order;
 - b. where paragraph does not apply, the person granted custody by an agreement;
 - c. where paragraphs (a) and (b) do not apply, the person claiming custody with whom the child usually resides; or
 - d. where paragraph (c) applies and 2 persons are equally entitled under it, the person who usually has day to day personal care of the child may exercise custody to the exclusion of the other persons unless a court otherwise orders.

Where a child is subject to an order under the Child, Family and Community Service Act, the Director has the right to custody of the child until the child is returned to the parent apparently entitled to custody or an order terminating the Director's custody of the child is made.

c) Usual Care and Control

1. The person who usually has care and control of the child is the person with whom the child normally resides and exercises day to day responsibility for the child. This person may or may not be the mother or father of the child (e.g. it may be grandparents, other relatives or adult caregivers).
2. How do school administrators determine who is a “parent”?

School administrators are entitled to act on the information concerning guardianship, custody and usual care and control of the child which is provided to the school by the parents at the time the student is enrolled in school until the school receives notice from one or other of the parents or the Director acting under the Child, Family and Community Service Act that the situation has changed. In this event, school administrators should request written confirmation of the change, that is, a copy of the order or agreement relating to the change in custody, guardianship or usual care or control.

Any court orders should bear a stamp from the court registry in which they were filed indicating that the order has been registered with the court. Separation agreements should be signed by both parties to the agreement. Separation agreements may be filed with the court but this is not necessary to make the agreement legally binding.

Orders made under the Divorce Act have legal effect throughout Canada, notwithstanding that the orders may have been made in Provinces other than British Columbia. Orders made by courts outside British Columbia pursuant to Provincial legislation comparable to the Family Relations Act may be recognized by courts in British Columbia and should be respected by school administrators unless superseded by a subsequent court order or agreement.

If school administrators have any questions as to the validity or meaning of an order or separation agreement, they should seek advice from CIS or legal counsel rather than relying on any representation from the person providing the order or agreement.

II Parent Rights under the Divorce Act

Parents may also acquire the right to information concerning the education of their child as they result of other legislation. Under the Divorce Act a spouse who is granted “access” to a child under that Act is entitled to information as to the health, education and welfare of the child.

Section 16(5) of the Divorce Act provides that:

Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education, and welfare of the child.

There is no comparable provision given to a person granted “access” to a child under the Family Relations Act.

While parents with the right of access to their child under the Divorce Act have the right to receive information about the education of the child from school administrators (eg. to receive the child’s report card or related information such as the child’s attendance record), these parents do not necessarily have all of the rights provided by the School Act. In order to have rights under the

School Act, they must fall within the definition of “parent” under the Act.

It should be noted that the right granted a noncustodial parent under Section 16(5) of the Divorce Act is subject to a court ordering some other arrangement. A court may make a specific order with respect to the rights of a noncustodial parent to information about the child’s education. Orders may relate to such matters as who may pick up the child from school, the nature of the information which should be provided to the noncustodial parent, and the role of the noncustodial parent at school activities, events and parent-teacher conferences. Specific orders related to the right to information take precedence over Section 16(5).

III. The Relationship Between Home and School

The primary contact with the school should be the person who has legal custody of the child. While a person who has guardianship or usual care and control must be afforded the rights of a parent as specified in the School Act, in addition to any rights which may be given to the person under a court order, the day to day contact between school and home should be with the custodial parent. Where school administrators require information or direction regarding the child, the contact should be with the custodial parent whenever possible.

If the custodial and noncustodial parent disagree about a course of action related to the child then the school administrator should take direction from the custodial parent. School administrators should not become embroiled in disputes between parents. The school administrator should take direction from the custodial parent unless and until the matter is clarified by a court order or subsequent agreement between the parents. For example:

1. If a custodial parent objects to the noncustodial parent meeting with the child at school and there is no order or agreement giving the noncustodial parent the right to be involved with the child at school (eg. as a volunteer), then the custodial parent’s decision should be respected. The noncustodial parent can apply to court for an appropriate order if he or she wishes to pursue the matter.
2. If the noncustodial parent wishes to attend a parent-teacher conference at school when the custodial parent objects to this and the noncustodial parent has no apparent right under the School Act, court order or separation agreement to attend such a meeting, then the school administrator should abide by the directions of the custodial parent.

It should be emphasized that it is not always possible for school administrators to do all of what a custodial parent may request in relation to a child. School administrators may not be able, for instance, to prevent all contact between an older child and a noncustodial parent at school. School administrators only have an obligation to comply with requests, which are reasonable in the particular circumstances.

IV Pending Custody Disputes

On occasion school administrators and staff are asked by a parent engaged in a custody dispute to testify or swear an affidavit on his or her behalf. The administration and staff of a school should endeavour not to provide any appearance of support to one side or the other in a custody dispute. If administrators or staff have information that a party requires for the court proceeding, then the staff member can be subpoenaed, or the school records ordered by the court.

V Students Living Independently

There are a number of students attending secondary schools who are living on their own. If the student is a minor (under 19 years of age) the school should inquire as to who has legal guardianship. It may be the student's parents or the Director under the Child, Family and Community Service Act. The extent to which the school administrators need to report to the guardian concerning the student's progress will depend on the directions given by the guardian to the school.

VI Summary

1. The custodial parent is the main contact between school and home. Any information or directions, which the school requires about the child should be obtained from the custodial parent. If the noncustodial parent claims that he or she has better or different rights than are evident to the school and there is a dispute between the custodial and noncustodial parent, the noncustodial parent can apply to court for a specific order granting the rights claimed.
2. Persons who have "access" under a Divorce Act order are entitled to receive information concerning the education of the children who are the subject of the order (e.g. the report card and related information such as attendance record).
3. The principals are entitled to rely on the information regarding custody, guardianship, access and usual care and control, which is provided to the school at the time of initial registration. If there is a change in the legal status of the parents, it is up to the parents to bring it to the attention of the school. Administrators should then take steps to verify the status by asking for a copy of the order or agreement.
4. Principals and staff should not give the appearance of support for one parent or the other in the event of a custody dispute. Principals and staff should generally not give evidence in support of one parent unless they have been subpoenaed as a witness in the proceeding. Principals should consult with the Superintendent who has access to legal advice, if required, for clarification and guidance.

References: Policy & Procedure 325	Date: August 2023
	Revisions: