

Custody Issues and Concerns for School Administrators

Frequently Asked Questions

Custody Orders and Terms

What documents should we obtain when the parent reports there is a custody issue or case?

The school should ask the parent for a certified copy of the custody order or decree and of any subsequent orders of modification.

Is there a required place to maintain the document? Who else should we share the document with?

Whether the terms of an order need to be shared with staff beyond the front office might depend on what the order says. It may not be necessary to distribute a fairly routine order for shared legal and physical custody that just sets out some schedule for which nights a child stays at which house. But if there were a custody order that granted sole legal custody or some protective order which curtailed a parent's rights to have contact with a child or cut off access to educational records, etc. then it could be appropriate to make sure that the classroom teacher or others who might commonly interface with the family know that the order is out there, so that they don't unknowingly facilitate violations of the order.

Should we verify the document is official? If so, how?

The school should ask parents for certified copies of any court orders. The court's certification on the order will demonstrate that the order is genuine and official.

What do the following terms that are commonly found in court orders mean?

In Alaska, parental rights include the right to physical possession of the child, the right to discipline a child including the right to inculcate the parent's moral and ethical standards, the right to manage a minor child's earnings and property, and the right to prevent adoption without consent. In making orders allocating those rights as between two parents, Alaska courts differentiate between legal custody and physical custody.

- a. Legal Custody is responsibility for making major decisions affecting a child's welfare. Alaska courts often award parents shared legal custody, so that even parents who are not a couple are expected to communicate and cooperate with each other to jointly make decisions in the child's best interest. When there is evidence that the parents cannot adequately communicate and cooperate regarding a child, the court may award one parent sole legal custody, meaning that parent has exclusive authority to make major decisions regarding the child's welfare. The fact that a parent has been awarded sole legal custody does not, however, eliminate all of the other parent's parental rights. The parent who does not have legal custody still has rights of access to their child's educational records, just not decision making authority.
- b. Physical Custody is entitlement to spend time with the child. Awards of physical custody should assure that the child has frequent and continuing contact with each parent to the maximum extent possible. It is common that parents share physical custody. Orders regarding physical custody often establish a custody schedule, specifying what time the child will spend with each parent, unless the parents agree otherwise. Physical custody orders may also schedule deviations from a regular routine related to holidays or school breaks. Parents who share physical custody of a child can mutually agree to deviations from the court-ordered schedule to facilitate travel plans, family events, and so forth. Although the law favors a child spending time with each parent, there can be court orders for a child to spend more time with one parent and less with the other.
- c. Primary Custody means that the court has ordered that a child spend more time with one parent than with the other.
- d. 50/50 Custody refers to a physical custody order that calls for the child to spend equal amounts of time with each parent, such as alternating weeks. Custody orders do not always specify exactly when regular changes of

custody occur. Students subject to orders for shared physical custody do not always switch households on the weekend.

- e. Supervised Visitation may be ordered when a court finds that it would adversely affect a child's well being to spend time alone with a parent and that the parent will therefore be permitted to spend time with the child only when a responsible third-party is present.
- f. Restraining or Protective Order. Individuals who have been victims of stalking, harassment, or domestic violence and certain other crimes can petition a court to issue a protective order which limits the perpetrator from contacting or being around them. The person who seeks and is protected by the order is called the petitioner. The person whose rights would be limited by the order is called the respondent. Alaska law provides for both short term and long term protective orders. Short term orders generally last not more than 20 days and can be entered *ex parte*, meaning that there are circumstances in which the court can issue a short term order without the respondent first having notice of the petition or the opportunity to contest it. Long terms orders, which typically last one year, should only be granted after an evidentiary hearing of which the respondent has notice. Protective orders may prohibit conduct such as following, confronting, watching or stalking a person or their household members, or from being near the petitioner's residence, school, place of employment or other specified locations. Protective orders can also grant temporary custody of a child, which applies only while the protective order is in effect. Because protective orders are tailored to specific situations, it is not sufficient to just know that a restraining order has been issued. It is important to have a copy of the written order and to read the specific terms of each order to determine the duration of the order and what conduct that particular order prohibits. It is also important to know if an order has been dissolved, modified or extended. Whenever a parent tells the school that there is a restraining order, the school should ask for a certified copy of the written order and should ask whether there are any other orders, such as any order dissolving, modifying or extending the order.
- g. Guardianship. A guardian is someone appointed to make legal decisions for another person who is unable to make those decisions on their own. Guardianship is often over a minor child or an individual who has become incapacitated through age or disability. Minor children may have guardians when their parents are deceased or incapacitated. A parent can use their will to name a guardian for their child, specifying who should become their child's guardian if they should die before the child turns 18 and the other parent has already died or been declared incapacitated. A court can appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or suspended by circumstances or prior court order. Guardianship of a minor only lasts until the child's eighteenth birthday. Courts can also appoint a guardian for someone who is not a minor, but is unable to make decisions on their own. Some of the District's older students who are no longer minors may have guardians. Whenever the school is informed that there is a guardianship, the school should request that the person purporting to be the guardian provide a certified copy of the order establishing the guardianship.

What other terms are commonly found in the order should we understand?

- h. CASA. Court Appointed Special Advocate, which refers to a volunteer trained by the Office of Public Advocacy CASA program to represent the interests of abused and neglected children in court. CASAs are not parents, guardians, probation officers or social workers and do not have any decision making authority regarding a child's education. The role of a CASA is solely to act as an advocate within the judicial process in children's protective Child In Need of Aid cases.
- i. GAL means Guardian Ad Litem, a professional who may be appointed in judicial proceedings to independently investigate and provide opinion regarding the best interests of a child. GALs may be involved in children's protective proceedings, juvenile delinquencies, domestic violence cases, custody cases, child victims in adult criminal cases, adoption cases or emancipation proceedings. A GAL is not a child's guardian and does not have any educational decision making authority.

How do we know the order is still effective? Is there an end date for the order?

Orders are generally effective as of the date they are issued. Custody orders such as those entered in divorce or custody proceedings typically do not have end dates. They remain in effect until the child's 18th birthday or until they are modified or superseded by a subsequent order. Temporary custody orders contained within protective orders expire when the protective order expires.

Should we contact the parent routinely to determine if the order is still current?

No. A custody order generally remains in effect until the child's 18th birthday or until it is modified or superseded by a subsequent order. Orders that are only interim or temporary orders will typically state as much. It is generally not necessary to routinely ask parents to verify that the custody order on file remains in effect. It is the responsibility of the parent to notify the school of changes by providing a certified copy of any modification order. It is possible to find through the court system website case dockets which should indicate the dates that orders have been issued, but the responsibility for advising the school of any change in custody orders lies with the parent who should provide certified copies of any orders for modification, etc. The school is not responsible for undertaking detective work to independently verify the authenticity or effectiveness of any certified custody orders provided by a parent.

When there is a disagreement on the custody order, do we always rely upon the order that the school does have or should we take the word of the parents? Sometimes we do not have the most up-to-date information, so what should we rely upon?

The school should rely on the certified copies of court orders that have been provided by a parent. If a parent contends that the order on file with the school has been modified or superseded, the school should ask that parent to provide certified copies of any more recent relevant orders.

Once a restraining order expires, are we required to adhere to the custody order? What if we still have safety concerns for the student?

Protective orders each have a specific duration. Once a protective order expires, is dissolved, or superseded, that order has no further legal effect and should be ignored. If the school has concern about the safety or welfare of a student who was previously protected by an order, those concerns can be relayed as appropriate to the Office of Children's Services or law enforcement, depending upon the nature of the concern.

Who has the right to enroll a student when there is shared custody? What if there is a dispute between the parents on a preferred school to enroll the student in?

When a parent is enrolling their child in school, the school should operate under the assumption that they have the right to enroll the student unless notified otherwise. When the school has been advised that enrollment is an issue, it should look to the terms of any certified custody orders provided by the parents. A parent who has been granted sole or exclusive legal custody has authority to make decisions alone. When a court has ordered shared legal custody the parents are expected to be able to communicate and cooperate to make decisions together in the best interests of the child. If the parents cannot do so, then a parent should move the court to modify the order that requires shared legal custody. The school should not mediate those disputes or prefer one parent over the other.

Guardianships

Who should we contact first when issues arise at the school, the guardian or parent who has not lost their parental rights?

Because Alaska courts only appoint guardians for minor children when a parent's rights have been terminated or suspended, the school should first contact the guardian, not the parent. Students who are already 18 are no longer minors, but may have guardians.

Should the school take any action when the parents are not married and a custody order is not in place?

When paternity has been acknowledged or legally established, marital status does not have any bearing on the parent's legal rights. In the absence of any judicial custody order curtailing rights, both of the parents listed on a child's birth certificate have equal parental rights, even if they were never married or never a couple. The parents of children who are not subject to a custody order may orally communicate to the school regarding their informal

arrangements for the children, so that the school is aware of their family routines, where the children are likely to be, etc. but the school should not treat either parent as having rights superior to the other in the absence of a court order. The school should permit each parent to come to school, participate in the child's education, and exercise all rights that parents have with their children unless and until the school has been provided with a certified copy of a court order which clearly establishes that a parent is not allowed to have access to their child or is restricted or limited in some way in exercising parental rights.

Who should we communicate with in relation to guardians and legal parents about student discipline issues?

A court would not appoint a guardian for a minor child unless there were an order limiting, terminating or suspending a parent's rights, so whenever the school has an order reflecting that a guardianship is currently in place, the school should communicate with the guardian about student discipline and other issues.

The school typically contacts only the first listed guardian in PowerSchool. Are we obligated to contact all guardians and/or parents, or can we expect them to communicate on their own?

When there are medical, educational, or disciplinary issues that require parental involvement in major decisions regarding a student and school records reflect that adults with separate contact information share custody and decision making responsibility, the school should attempt to communicate with both of those people, not just the first person listed in PowerSchool. Communicating only with one parent regarding such issues would be appropriate when the school has a certified copy of a court order indicating that one person has sole legal custody.

If we cannot reach a guardian, who should we contact? The parents or emergency contacts?

Because a guardianship for minor children is established only when there is an order limiting, terminating or suspending a parent's rights, the school should generally not contact the parent to address discipline or other issues while a guardianship is in place.

Office of Children's Services

Will the school remain informed surrounding custody issues related to the Office of Children's Services (OCS)?

When a child is in the custody of the Office of Children's Services, their social worker should provide information to the school regarding the child's status.

If OCS has custody of the student, who do we communicate with?

That depends on the child's placement. When there is a long-term foster care placement or placement with a natural family member, the foster parent or family member may affirm that they are willing to act as the parent. For students with a disability, the District may need to appoint a surrogate parent to act as the child's educational decision maker when no one who meets the definition of parent under the IDEA is available.

If OCS has custody of the student, who attends IEP meetings? Are we obligated to contact the biological parents?

Who can act as the parent will depend on the child's situation and placement. Professionals who may be involved with a child in State custody, such as the social worker, probation officer, GAL or CASA cannot act as parents for the purposes of educational decision making for children with disabilities. There can be situations in which a foster parent or other relative can perform the role of parent in IEP meetings because the definition of parent under the IDEA includes a biological or adoptive parent, an affirmed foster parent recognized by the District, a guardian authorized to act as the parent or make educational decisions for the student, an individual acting in the place of a biological or adoptive parent with whom the child lives and who is legally responsible for the child's welfare, and a surrogate parent appointed by the District. When no one else is available to serve as parent, the District should appoint someone as a surrogate parent to be the student's educational decision maker in accordance with Board Policy 937.71.

FERPA

Are there any FERPA related issues with custody orders and parent communication?

State law requires that noncustodial parents be provided the same access to educational records as custodial parents. AS 25.20.130. Under FERPA, parents retain their rights to review and inspect a child’s educational record unless the school has been provided with evidence that there is an order relating to such matters as divorce, separation or custody that specifically revokes those rights. 34 CFR 99.4. The existence of a custody dispute is irrelevant to the exercise of FERPA rights. FERPA requires a school to provide parents an opportunity to inspect and review educational records within 45 days following its receipt of a request. There may, however, be situations in which the school is aware that disclosure of information from a child’s educational record to a parent may pose safety risks for the child. In those rare situations when a school has reason to believe that prompt disclosure may pose a safety risk to a student, the school may wish to delay disclosure until closer to the end of the 45 day period in order to provide the other parent time to seek a court order limiting disclosure.

How do we ensure FERPA is adhered to when the parents fail to provide information related to pending divorce and custody issues?

Pending divorce and custody issues do not diminish a parent’s rights to review and inspect their child’s educational records under FERPA. So the fact that there is an unresolved custody dispute is irrelevant to the exercise of FERPA rights. The school should permit all parents to exercise their rights under FERPA unless and until the school has been provided a certified copy of an order clearly revoking such rights.

Can a parent meet with the student’s teacher if they are only allotted supervised visits with the student?

Yes. An order for supervised visitation only means that a parent cannot spend time alone with the child. It does not alter a parent’s other legal rights. A requirement that visitation be supervised does not limit the parent’s rights of access to their child’s educational records or to interact with educators, such as by meeting with the child’s teacher.

Can we share information with the boyfriend or girlfriend of one of the student’s parents? What if the other parent does not want us to?

That depends on the information and the circumstances, including the nature of the child’s relationship with the stepparent and whether a parent is present. FERPA provides parents a right to review and inspect educational records and defines “parent” to include a “natural parent, a guardian or an individual acting as a parent in the absence of a parent or guardian.” Because the definition of FERPA includes an individual acting as a parent in the absence of a parent or guardian, there can be situations in which a partner of the parent with whom a student resides may count as a “parent” entitled to review and inspect records under FERPA. In addition to providing rights to review educational records, FERPA also limits disclosure of a student’s educational record without written permission from a parent. However, FERPA does not require that more than one parent consent or provide either parent authority to limit the other parent’s access. When one parent has given written consent for disclosure, the other parent does not have the right to pre-empt or veto disclosure.

Enforcement

Are we required to enforce a custody and/or restraining order? If there is a dispute, do we resolve the dispute or should we contact law enforcement?

If there is concern that someone is violating a protective order on record with the school, the school should contact law enforcement.

When a parent has shared custody (week on, week off), are we obligated to know who the student is residing with that week? What if the parent attempted to pick up their student on a week that is assigned to the other parent?

Parents may agree to occasional deviations from a court ordered custody schedule, to accommodate travel, family obligations, etc. Also, 50/50 custody arrangements with alternating week schedules do not always call for custody to change on the weekend. Absent communication from a parent indicating that the other parent is attempting to deviate without permission from the clear terms of a certified custody order on record with the school, the school should not police which parent picks up or drops off a child in a particular week. When there is on file a certified

copy of a court order with clear custody terms and parent with custody under that order asks the school not to let the other parent pick up the child during the custodial parent's time, the school should honor that request.

To enforce the “not allowed to pick up” or a restraining order, do we need the actual document?

The specific terms of each order, including a restraining order, are important. A school should not take act based on an order without first reviewing the terms of a certified written copy of the order.

What should we do if a parent attempts to violate a custody or restraining order in the school?

If a parent seems to be attempting to violate a custody order that's on file with the school and the custodial parent has asked that the noncustodial parent not be permitted to do so, the school can verbally communicate to the parent in order to inquire whether the certified order on file with the school has been modified or dissolved and ask the parent to supply a certified copy of any subsequent order that they may contend authorizes their conduct. The school can contact law enforcement regarding violation or attempted violation of restraining orders.

What should we do if we are subpoenaed to testify in a custody proceeding? Do we really have to participate?

Yes, a subpoena is a court order compelling attendance of a witness. A person who ignores a subpoena and refuses to appear for a deposition, hearing or trial when properly subpoenaed risks issuance of a bench warrant for their arrest to compel their attendance.