

Quick Reference Guide: Handling Custody Issues in the School



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Introduction

School officials are often called upon to sort out difficult and emotional family situations. We hope this short guide provides useful information that is easy to follow. This guide will address various issues from dealing with enrolling a student to withdrawing a student from school. There are many factors involved in handling these requests, including but not limited to:

- The action being requested of the school;
- The individual requesting the school action;
- The documents provided by the individual;
- The student's records; and
- The safety of the student and of staff.**

Common sense and a careful examination of the documents in your possession will help you steer clear of conflict in these emotionally charged situations.

The Office of Legal Services has found that there are several common questions that arise during the school year that can be answered easily and quickly by the local campus staff. Those questions include:

- Who can withdraw the student?
- What effect does the enrollment card have on parental rights?
- Who has access to the child during the school day?
- What effect does a custody order have on the rights of the parents?
- Can the non-custodial parent receive a copy of the child's records?

Any request for access to a student or request for information regarding a student, whether it is from a parent, relative or friend of the family, should always prompt the office staff to check the enrollment card for persons authorized to have access to the student and/or authorized to receive information regarding the student.



Remember, it is not the school's duty to interpret or enforce a visitation schedule, nor should school officials allow themselves to be caught in the middle of these disputes.

Who is a parent?

The definition is broadly defined under state law. This is in part to capture the various family relationships with which our students are often faced.

The Texas Education Code, Section 26.002 defines a parent as:
a person standing in parental relation.

The Texas Family Code, Section 101.024 defines a parent as:
the mother, a man presumed to be the biological father, a man legally determined to be the biological father, a man who has been adjudicated to be the biological father by a court of competent jurisdiction, or an adoptive mother or father.

The term does not include a person as to whom the parent-child relationship has been terminated by court order or a person not entitled to possession of or access to a child under a court order.

What rights do all parents generally have?

Unless restricted or altered by a court order, both parents will usually have certain rights regarding their child at all times. These typically include but are not limited to the right to:

- receive information from the other parent concerning the health, education, and welfare of the child;
- confer with the other parent, to the extent possible, before making a decision concerning the health, education, and welfare of the child;
- access to medical, dental, psychological, and educational records of the child;
- consult with school officials concerning the child's welfare and educational status, including school activities; and
- attend school activities.

Enrollment Card

The enrollment card is a quick reference form and provides general information about the student. One of the most common situations involves one parent either requesting the school to not include information about the other parent on the enrollment card or simply refusing to provide the school with the other parent's contact information. Texas Family Code, Section 153.73 specifically grants even non-custodial parents the right to be designated on the child's records as a person to be notified in case of an emergency.

This means that if you have a parent who does not want the other parent's information noted on the enrollment card, you cannot honor this request without a court order. The enrollment card should have the names of both parents and any other individual who can be contacted in case of an emergency. These are individuals the school may release the child to in the event a parent is unavailable.

The enrollment card does not determine the parental relationship. For example, a parent may enroll a child in school and attempt to place restrictions on the other parent with regard to access to the child. The enrollment card information in no way changes the parent-child relationship. If one parent wishes to impose limitations on the other parent, a court order outlining the restrictions will be necessary.

The enrollment card is not a court document. The Family Law courts have jurisdiction over suits affecting the parent-child relationship or a "SAPCR." If there is no court order, signed and dated by a judge that specifically denies a parent access to a child, the school may not attempt to deny access to the child.



Helpful Hint: *If at the time of enrollment, a parent informs you of a problem in the family and he or she does not want the other parent to pick up the child, tell them they must bring a court order restricting the parent's access to the child. Otherwise, the school cannot attempt to deny access.*



Helpful Hint: *Consult the enrollment card. Look for any other decree the enrolling parent may have on file that does establish custody or visitation. If there isn't one, **notify the other parent**, immediately.*

- *If possible, do not release the child if you feel unsure about the safety of the child or the identity of the person.*
- *Do call security and/or the police if you feel threatened.*
- *Keep calm, but be firm.*
- *Advise the parent that it is the policy of the District to attempt to make best efforts to follow the most current court order on file with the District. Encourage the parent to bring in more recent orders if the parent claims he/she is entitled to possession of the child. If possible, do not release the child until you have as much information as possible. Try not to involve the child until the situation is stabilized. **Ultimately, there is no law prohibiting the parent from taking the child.** It is not a kidnapping unless the taking of the child is unlawful.*
- *Call the Office of Legal Services for assistance.*

Court Orders and Decrees

There are several types of court orders or decrees. Some decrees establish paternity but do not address rights of possession or visitation. Others are orders to pay child support only. Occasionally, you may see a decree establishing conservatorship. Primarily, the parent-child relationship is determined in a divorce decree.

A divorce decree, if there are children of the marriage, must include a decision by the court regarding custody of the child/children. The divorce decree is combined with a custody order that identifies the child, establishes the primary residence of the child and the circumstances under which the parent or other person in parental relation may have access to the child. It will also include an order of support. We should make best efforts to honor these decrees regardless of a parent's wishes.

Key Terms:

Joint Managing Conservatorship. Unless the court has determined otherwise, in most circumstances because it is believed to be in the best interest of the child to have a close, on-going relationship with both parents, joint managing conservatorship will be awarded. Joint managing conservatorship is the sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party. Some rights and duties always belong to both parties; some may belong only to one party; some belong to one of the parties while they have possession of the children; and some are shared by the parties.

Sole Managing Conservatorship is the relationship between a child and a managing conservator when one parent has been given certain exclusive rights, including the right to designate the primary residence of the child, the right to make decisions concerning the child's education and the right to consent to medical, dental, and surgical treatment involving invasive procedures, and to consent to psychiatric and psychological treatment. These rights, however, may be modified by court order.

- **Possessory Conservatorship** is a court-ordered right of possession of or access to a child, including conservatorship, custody, and visitation rights. However, as mentioned above, unless a possessory conservator's rights have been altered or restricted by court order, even possessory conservators have numerous rights to a child, including but not limited to the right to be listed on the child's enrollment card as an emergency contact, the right to access educational records of the child, the right to consult with school officials concerning the child's welfare and educational status, and the right to attend school activities.

A **petition** is a formal written request to a court for an order of the court.

An **order** is the direction or mandate of a judge or a court directing that something be done or that there is prohibition against some act.



Helpful Hint: *Keep in mind that the rights of possession, visitation, etc. are found in the terms of the decree and are not necessarily contingent on the type of conservatorship that exists.*



Helpful Hint: *Do not rely on the parent's verbal representation that there is a court order and that he or she has the right to determine access. You must get and keep a copy of the order. It will be necessary to produce the order if a child is taken from school and the police need to be informed. Remember, it must be signed by a judge. If it is only a copy of the petition, (i.e. the party's request of the court to take action), it is not a final order and the matter has not been decided by a court. If you are not sure the document is authentic, the language is confusing or pages appear to be missing, call the Office of Legal Services for assistance.*

Young County Standing Order Regarding Children, Property and Conduct of the Parties

Every divorce suit and suit affecting the parent-child relationship that is filed in Young and Stephens County is subject to the same Standing Order unless specifically altered by a court order. For district purposes, the relevant portion of the Standing Order is the following language:

No Disruption of Children.

Both parties are **ORDERED** to refrain from doing the following acts concerning any children who are subjects of this case:

- 1.1 Removing the children from the State of Texas for the purpose of changing residence, acting directly or in concert with others, without the written agreement of both parties or an order of this Court.
- 1.2 Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled, without the written agreement of both parents or an order of this Court.
- 1.3 Hiding or secreting the children from the other parent or changing the children's current place of abode, without the written agreement of both parents or an order of this Court.
- 1.4 Disturbing the peace of the children.

What does this mean?

While the divorce and/or custody proceedings are on-going, neither parent may remove the child from the school where the child is currently enrolled without a court order or the written agreement of both parents.

What if there is not an on-going divorce hearing or custody proceeding, does the standing order still apply?

No. If there is not an on-going divorce hearing or custody proceeding, this standing order is not applicable. If a court order exists, you will need to follow the court order. If there is not a court order, both parents have equal rights and access.

Birth Certificate

For district purposes, a birth certificate is sufficient to establish a parent-child relationship. If a person can produce a valid birth certificate and identify him or herself as the named individual on the birth certificate, he or she has the same rights as any other parent, even if the child is not living with them. For district purposes, the birth certificate is controlling, **unless** the school has on record a copy of a court order that either modifies the parent's rights or terminates them completely, in which case the court order governs.



Helpful Hint: *If a parent attempts to withdraw the child and the child does not live with that parent, contact the enrolling parent immediately. Again, attempt to get as much information as possible from the parent before releasing the child. (i.e. copy down the driver's license number, address, home or work number, etc. In other words, the same information you have on the enrolling parent. Ask if they are planning to remove the child from school. If so, where should we send the child's records? Whom should we contact in case of emergency?).*

Power of Attorney

A power of attorney may be used to establish the rights of a non-parent to take responsibility for the care of a child in situations where either one or both parents are unable to do so. We may use it for enrollment purposes to establish the child's actual residency. However, a parent that does not live in the district may not circumvent the residency requirement by using another person's address and giving them power of attorney, when the child actually resides with the parent.



Helpful Hint: *Remember, there are other factors that must be considered in determining whether or not a child is eligible to attend a particular school. Please call the Office of Legal Services if you have any questions regarding whether or not a child may attend a particular school.*

By law, only a court may modify or terminate a parent-child relationship. The power of attorney does not do this. It does not relieve the parent from liability for truancy, medical bills, or the duty to support. The parent remains the parent even if he or she allows the child to live elsewhere.



Helpful Hint: *Do not rely on a power of attorney signed by one parent that purports to give custody to another individual. If the non-signing parent shows up and wants to take the child, there is no court order preventing the parent from doing so. Again, a power of attorney cannot modify or terminate a parent-child relationship.*

Authorization Agreement for Voluntary Adult Caregiver

This document is a form used by Graham ISD. We use it for administrative purposes such as, who to contact in case of an emergency or to locate a truant child, but it is not a court order and it does not change the parent-child relationship.



Helpful Hint: *Should a dispute arise between the person signing the affidavit of responsibility and one of the parents, the parent will always win. The affidavit does not establish custody and it does not override the rights of a parent.*

Protective Orders

The school may receive a copy of a protective order that prevents access to a child. A protective order is “any order or decree of a court whose purpose is to protect a person from further harassment or service of process or discovery.” If there is a protective order, the school should obtain a copy of the order from the student’s parent or legal guardian. **The school principal must make best efforts to ensure that the school adheres to the terms of the protective order.**

The order may restrict a person from going within a certain distance of a childcare facility or school attended by a protected person (student). The order may also prohibit the release of certain information including the

student's address and the name of the school the student is attending. Certain information (i.e. home address, telephone number, and name of the school the student attends) is generally considered public information. **If the school receives a copy of a protective order, the principal should ensure that the student's file is flagged for privacy on the database so that the information is not released in violation of the protective order.**



Helpful Hint: *When enrolling a student, ask if there is a protective order in place. If a protective order exists, get a copy of the order for the student's file. If you are not sure the document is authentic, the language is confusing or pages appear to be missing, call the Office of Legal Services for assistance.*

Consult the Office of Legal Services for assistance in determining the availability of administrative alternatives to a protective order which does not involve a student (but involves the student's parent).

Family Educational Rights and Privacy Act (FERPA)

When faced with question concerning a student's education records, FERPA will apply. FERPA is the federal law that protects the privacy of student education records. Parents have the right to inspect and review the student's education records maintained by the school. FERPA defines a parent as "a guardian, natural parent, or an individual acting as a parent in the absence of a parent or a guardian." When a student with disability is involved, you must follow the requirements of the federal Individuals with Disabilities Education Act (IDEA). According to IDEA, a parent is (1) a natural or adoptive parent; (2) a guardian, but not the State if the child is a ward of the State; (3) a person acting in the place of a parent, such as a grandparent or step-parent with whom the child lives or a person who is legally responsible for the child's welfare; or (4) a surrogate parent who has been appointed in accordance with IDEA regulations. In some cases, a foster parent may act as the parent of a child with a disability.

Generally, schools must have **written** permission from the parent in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- Non-custodial parent;
- School officials (including teachers) with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena¹;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents to review the records. Schools may charge a fee for copies in accordance with Board Policy FL (Local). The District charges in accordance with the cost guidelines established under the Texas Public Information Act. The school may charge ten cents per page for paper copies.

If you have any questions or need assistance, please contact GISD Central Office at 940-549-0595.

¹ FERPA requires the school receiving a judicial order or subpoena to make a reasonable effort to notify the student/parent before releasing student education records (so the student or parent may seek a protective order).

How would you handle the following scenarios?

Who Can Pick the Child Up From School?

Maria provides the school with a power of attorney given to her by Sabrina's mother giving her custody of Sabrina. Maria comments to the office manager that, if Sabrina's father shows up at the school, she does not want the school to release Sabrina to him. The enrollment card filled out by Maria does not provide the father's name, address or other identifying information. Two weeks later, Fred arrives at the school. He claims that he is Sabrina's father and has arrived to pick Sabrina up after school is dismissed. Fred presents the office manager with a copy of Sabrina's birth certificate, which lists him as the father, and his driver's license. The office manager asks Fred if he is planning to take Sabrina out of Butler Elementary. Fred states that he plans to keep Sabrina at Butler.

Should the office manager allow Fred to pick up Sabrina?

Answer: The appearance of Fred should prompt the office manager to search Sabrina's file for a copy of a signed court order that would limit Fred's ability to pick Sabrina up from school. In our hypothetical, the only documentation the school has is the power of attorney provided by Maria. Although Maria has requested that Fred not be allowed to have any contact with Sabrina, in this scenario, Maria's wishes are not controlling. A power of attorney does not modify or terminate the parent-child relationship. Without a signed court order terminating the parent-child relationship or limiting when Fred can pick up Sabrina, Fred has the right to pick up Sabrina from school.

The school should attempt to get as much information as possible from Fred before releasing Sabrina. Copy down the driver's license number, address, home or work number, etc. In other words, get the same information you have on the enrolling parent/guardian. Also remember that the Texas Family Code, Section 153.073 specifically grants non-custodial parents the right to be designated on the child's records as a person to be notified in case of an emergency. Fred's information should be added to the enrollment form.

Who Can Withdraw the Child?

Fred returns the following week to pick Sabrina up again. However, this time, Fred tells the office manager that, after giving it more consideration, he wants to take Sabrina out of Butler Elementary and enroll her in another school.

Can Fred take Sabrina out of Butler Elementary School? What should the office manager do?

Answer: Again, the office manager needs to search Sabrina's file for a copy of a signed court order that terminates the parent-child relationship or limits Fred's ability to make educational decisions for Sabrina. If the only documentation the school has is the power of attorney provided by Maria, Fred can take Sabrina out of Butler Elementary. Remember, a power of attorney does not modify or terminate the parent-child relationship. Without a signed court order terminating the parent-child relationship or limiting Fred's rights, the school cannot prevent Fred from enrolling Sabrina in another school. The school should attempt to get as much information as possible from Fred before releasing Sabrina. Copy down the driver's license number, address, home or work number, etc. Find out where should the school should send Sabrina's records. Remember that the school is required to promptly forward a copy of Sabrina's educational records to the new school.

Who Can Have Access to the Student's Records

Fred arrives at the school and requests a copy of Sabrina's education records. Maria has requested that Fred not be given any of Sabrina's records.

Should you give Fred a copy of Sabrina's records?

Answer: Under the Texas Family Code, Texas Education Code and the federal Family Educational Rights and Privacy Act, a parent has the right to access the educational records of his or her child. In the hypothetical, the school should verify that Fred is Sabrina's father. Upon verification, Fred must be allowed access to the records. While the school is not required to provide copies of the records, if Fred requests a copy, the school may charge in accordance with Board Policy FL (Local).

Dueling Parents

Sabrina's mom, Dawn, is released from jail. Dawn wants Sabrina to come live with her. Fred is opposed and files a petition with the family court to be named sole managing conservator for Sabrina and restrict Dawn's access to Sabrina. Fred provides a copy of the petition to the school and instructs the office manager and principal to not allow Dawn to pick Sabrina up from school.

Dawn arrives at the school shortly before classes are dismissed for the day wanting to pick Sabrina up from school. The office manager pulls the petition from Sabrina's school records. The petition states that Dawn is not to have access to Sabrina.

Is this document controlling? Can the school release Sabrina to Dawn?

Answer: Remember, the petition is simply Fred's request to the court that he be named the sole managing conservator and that certain prohibitions against Dawn be put in place. It is not a court order. Therefore, it is not a controlling document. Without a signed court order restricting Dawn's access to Sabrina, Dawn's right to pick up Sabrina from school is equal to Fred's.