

# LEGAL CUSTODY OF CHILDREN

## Background

Custody disputes between parents or other family members may be complicated by the fact that legal custody of the child has not been assigned by the court. In such cases, de facto custody lies with the parent/guardian with whom the child lives during the school week. In cases where joint custody exists this should be clearly articulated in the court document on file.

Parents/guardians are responsible to ensure the school is provided with the latest court documentation.

It is necessary to avoid becoming involved in a custody dispute, and the protection and best interest of the child must be the major factor in a variety of decisions a Principal must make including whether or not to release a student to a person claiming custody. Principals shall abide by court documents provided to them.

Students who are the subjects of custody claims are not to be released from school until the normal morning or afternoon dismissal time.

Please refer to Appendix A.

## Procedures

1. All claims for the custody of students must be referred to the Principal.
2. Where there is a demand for custody of a student and legal custody is uncertain, the Principal shall:
  - 2.1 Ask the claimant to identify himself/herself and produce a legal order or a notarized statement for custody. The Principal shall retain a copy of this, and refer to any other legal documents in the possession of the school. The most recent document shall be followed. A letter from a legal firm does not constitute a legal document in respect to this matter. The document must be a court document/notarized statement for custody.
  - 2.2 Inform the claimant that the student will not be released from school until the normal morning or afternoon dismissal time; and that the parent/guardian with whom the student normally lives during the school week will be informed that the claim for custody has been made.
  - 2.3 A social worker or RCMP officer may be contacted for advice and assistance in determining whether or not to release a child to a specific individual where a dispute arises.

3. A record shall be kept in the school of any custody claims which may be received, including dates, times, names and demeanour of persons involved, and as much of their actual statements as it may be possible to record.
4. When deemed necessary, the Superintendent (or designate) shall be informed by the Principal of all demands for custody which s/he may receive.
5. Any request for access to a student or information (e.g. learner profiles, etc.) about a student from a parent/guardian with whom the student does not live shall be referred to the Principal. Such information may be released to an individual with parental rights. An individual who is a parent of a child and for whom there is no court documentation restricting access to the child is assumed to have parental rights.
6. Principals are to use their discretion in dealing with such requests, bearing in mind that a court order restricting the access of a parent to his/her child applies while the child is in school, on school property, or involved in any school sanctioned event.

Reference: Relevant Legislation & Guidelines

### Custody Protocol

In Foothills School Division, we are committed to providing positive, safe and caring learning environments for our students. We sympathize with families that are coping with separation or divorce, including custody and child access disputes, however, for the benefit of all our students and staff, it is important for families to understand:

1. Foothills School Division personnel will maintain a position of neutrality with respect to outcomes in custody or access disputes. Accordingly, FSD employees are unable to provide letters of opinion or support, comply with interview requests from lawyers or other professionals, or voluntarily testify for one parent against the other or as a neutral party.
2. In the absence of a current Court Order or Agreement pursuant to a statute governing custody of a child, our schools are legally obligated to allow both parents/guardians an equal opportunity to make decisions regarding their child's education. A copy of the most current Order/Agreement must be provided by the parents/guardians to the school Principal and shall be kept on the student's record.
3. If a custodial parent refuses to provide the school with a copy of the most recent Court Order/Agreement, our schools are required by law to provide both parents/guardians with equal access to information and decision-making authority regarding a student's education.

### Definitions

**Parenting:** "Parenting" is a term in the Family Law Act that applies when guardians do not live together. Normally, when guardians live together, they share all of the powers, entitlements and responsibilities for the children. But when they live apart, they must come to terms with how the time with the children will be shared and how decisions will be made. In some cases, the guardians are able to work things out between themselves with just a verbal agreement. In other cases, they may be able to work things out, but want to formalize the arrangements. They will then enter into a "Parenting Agreement", which is a contract between the guardians that sets out how much time the children will spend with each of them, and how decisions will be made. If the guardians are not able to agree, then they can go to court. In that case, the judge will hear from both of them, then will make a decision about the time that the child will spend with each guardian and how decisions will be made. The judge's decision is set out in a Parenting Order.

*(Government of Alberta Resolution Services: General Information Booklet: GUARDIANSHIP, PARENTING, CUSTODY, ACCESS, AND CONTACT, 2017)*

**Custody:** When parents are married, they are both guardians of their children and share all of the powers, entitlements and responsibilities. If they separate and file for divorce, the agreement or order that is made will often use the terms "custody" and "access". If there is no order or agreement in place, then married parents have "joint custody". That means that they make the decisions about the children together and that they are both entitled to spend time with the

children. Often, parents will continue the joint custody in their agreement or order but will specify with whom the children will live and how the other parent's time with the children will work. The parent with whom the children spend most of their time is said to have "primary care and control" – which means that they make the day-to-day decisions most of the time. The other parent has "access", which means that they spend time with the children. The parents may agree, or the court may order that one of the parents has "sole custody". This means that one of the parents makes all the decisions about the children. In most cases, the other parent will still have access. (*Government of Alberta Resolution Services: General Information Booklet: GUARDIANSHIP, PARENTING, CUSTODY, ACCESS, AND CONTACT, 2017*)

**Access:** Access is a term used in the Divorce Act, so, in Alberta, it will only apply to divorcing or divorced parents. Access refers to the time that the parent without custody (or primary care) has with the children. If the other parent has sole custody, then the access parent has only the right to make day to day decisions for the children when they are in their care. For example, the access parent can decide what meals to serve or what activities the children will do but may not make decisions on medical care or schooling. If the two parents have joint custody, then the access parent has the right to make day to day decisions for the children when they are in their care, and also to participate in the major decisions about the children. Simply put, it means that the access arrangements are flexible, and that the parents are to work together to create a schedule that they both can accept. If this kind of arrangement does not work, the parents can create, or the court can order specified access. Specified access means that the days and times of the access visits are spelled out in the agreement or order. Sometimes only some of the days and times are spelled out, and the rest left as reasonable access. Other times, the order or agreement will be specific as to every access visit over the course of the year. (*Government of Alberta Resolution Services: General Information Booklet: GUARDIANSHIP, PARENTING, CUSTODY, ACCESS, AND CONTACT, 2017*)

For more information, please contact the school principal or Division Office at 403-652-3001