


**CHILD CUSTODY
ISSUES IN THE
SCHOOL SETTING**


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OVERVIEW




- Getting Involved in Court Hearings, Trials, Etc.
- Reviewing Court Documents
 - Legal Custody vs. Physical Custody/Care
 - Guardianship
 - Protective Orders/No Contact Orders
- Student Residency
- Access to Student
- Student Records

**GETTING INVOLVED IN
COURT HEARINGS**




- Being called to testify/produce documents
 - Subpoena to Appear and Testify
 - Subpoena Duces Tecum (Subpoena to Produce Documents)
 - Motion to Quash Subpoena
 - FERPA requires PRIOR notification to parent before producing records pursuant to subpoena.
 - Can parent request records as parent instead of using subpoena?
yes



GETTING INVOLVED IN COURT HEARINGS


- Testifying at hearing, trial, etc. involving both parents.
 - Questions to ask prior to agreeing to testify:
 - Who is calling school district official to testify?
 - Is there a subpoena?
 - What is school official's role in student's education?
 - General Rule: Can testify about student and student records
 - May ask school district attorney for tips for testifying in court if school official has never testified before.

** Don't testify unless there is a subpoena*



GETTING INVOLVED IN COURT HEARINGS

- Testifying at hearing, trial, etc. involving parent and another party (i.e., step-parent).
 - Questions to ask prior to agreeing to testify:
 - Who is calling school district official to testify?
 - Is there a subpoena?
 - Who consents to school district official testifying (must have one parent)?
 - What is school official's role in student's education?
 - General Rule: Can testify about student and student records, *provided one parent consents*.
 - If no parental consent, then school official should appear, but is limited in what he/she testifies about.



REVIEWING COURT DOCUMENTS

- Court documents from another jurisdiction
- Initial divorce (dissolution of marriage) action vs. modification action
 - Temporary matters action
- Married parents vs. Unmarried parents
 - Establishing paternity
- Specific provision related to educational decision vs. silent on educational decisions

Custody arrangements "cross state lines"

i.e. an Ohio order is good in IA

REVIEWING COURT DOCUMENTS

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Examined 1/16

■ **Stipulation between parties vs. Decree by Court**

REVIEWING COURT DOCUMENTS

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Examined 1/16

■ **Legal Custody vs. Physical Custody/Care**

- **Legal Custody** - an award of the rights of legal custody of a minor child to a parent under which a parent has legal custodial rights and responsibilities toward the child. Rights and responsibilities of legal custody include but are not limited to decision making affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction. Iowa Code § 598.1(5).

REVIEWING COURT DOCUMENTS

LYNCH DALLAS, P.C.
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Examined 1/16

■ **Legal Custody vs. Physical Custody/Care**

- **Joint [Legal] Custody** - an award of legal custody of a minor child to both parents jointly under which both parents have legal custodial rights and responsibilities toward the child and under which neither parent has legal custodial rights superior to those of the other parent. Rights and responsibilities of joint legal custody include but are not limited to equal participation in decisions affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction. Iowa Code § 598.1(3).

Almost always going to be joint legal custody

REVIEWING COURT DOCUMENTS

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- Legal Custody vs. Physical Custody/Care
 - **Physical Care** - the right and responsibility to maintain a home for the minor child and provide for the routine care of the child. Iowa Code § 598.1(7).

REVIEWING COURT DOCUMENTS

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- Legal Custody vs. Physical Custody/Care
 - **Joint Physical Care** - an award of physical care of a minor child to both joint legal custodial parents under which both parents have rights and responsibilities toward the child including but not limited to shared parenting time with the child, maintaining homes for the child, providing routine care for the child and under which neither parent has physical care rights superior to those of the other parent. Iowa Code § 598.1(4).
 - Also known as "shared care."


*Difference between "complying" w/ court order and "enforcing" court order. School officials should only COMPLY!

REVIEWING COURT DOCUMENTS

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- Legal Custody vs. Physical Custody/Care


REVIEWING COURT DOCUMENTS



■ Legal Custody vs. Physical Custody/Care

(Faint text from a document is visible in the background)

REVIEWING COURT DOCUMENTS




■ Guardianship

- Guardian – a “person appointed by the Court to have the custody of the person of the ward” Iowa Code § 633.3(20).
- Responsibilities of the Guardian:
 - “providing for the care, comfort and maintenance of the ward”
 - “taking reasonable care of the ward’s clothing, furniture, vehicle and other personal effects.” Iowa Code § 633.635.

Guardianship does not always mean access to everything

REVIEWING COURT DOCUMENTS



■ Other Relevant Court Documents:

- Department of Human Services (DHS) cases
 - Child in Need of Assistance (CINA) action.
 - Termination of Parental Rights action (Iowa Code Chapter 232.
- Protective Orders/No Contact Orders
 - Protective orders generally exist to protect a victim of domestic abuse. See Iowa Code Chapter 236.
 - No contact orders exist in criminal cases to protect the victim of a crime from being contacted by the criminal defendant. See Iowa Code Chapter 664A.

REVIEWING COURT DOCUMENTS

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SCHOOL DISTRICT

- What are a school district's obligations related to Court documents?
 - Enforcement vs. Compliance
- Also see the upcoming topics:
 - Student Residency
 - Access to Student
 - Student Records

can only be done by parties listed in order

EXAMPLES

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SCHOOL DISTRICT

- Example 1: Parent A tells school district that he is now the custodial parent and is the only person who should have access to Student A's records. Is Parent A correct? *NO*
- Example 2: Parent B tells school district that she was never married to Student B's father. Therefore, Father should have no right to see Student B and has no rights to Student B's records. Is Parent B correct? *Depends*


*Establish paternity
Is father's name listed on
birth cert?*

EXAMPLES

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SCHOOL DISTRICT


- Example 3: Person C comes to the school district requesting access to Student C's student records. Person C provides court documents saying she is Student C's guardian. Can the school district provide Person C Student C's student records?
 - What if Person C just told the school district that she was acting as guardian to Student C while Student C's mother was traveling overseas and did not produce any court documents?

Review guardianship documents




STUDENT RESIDENCY

- **Resident Student** – a child who is physically present in a district, whose residence has not been established in another district by operation of law, and who . . . [i]s in the district for the purposes of making a home and not solely for school purposes. Iowa Code § § 282.1(2), 282.6(1).



STUDENT RESIDENCY


- Issue: Does the student’s residency follow the court documents?
- Issue: What about residency with shared physical care?
- Issue: What about court documents specifying where a student is supposed to attend school?
- Issue: What if a student’s residency is different than what is stated in court documents?



EXAMPLES


- **Example 4:** Student D lived with Mother D and attended School District D last school year. School District D learns that Student D lived with Father D over the summer, and Father D is enrolling Student D in another school district for this school year. Mother D comes to School District D and attempts to enroll Student D in School District D. What should School District D do?
 - What if Court documents give Mother D primary physical custody/care?
 - What if Court documents give Father D primary physical custody/care?

Just find out where student is actually living during school year




ACCESS TO STUDENT

- Custodial Parent vs. Non-Custodial Parent
 - Custodial Parent - the parent with primary physical custody/care of the child
 - Non-Custodial Parent - the parent who does not have primary physical custody/care of the child
 - Shared Care - the parents have equal physical custody/care of the child
- Consider each parent's visitation times (in court documents)
- Protective order in place



ACCESS TO STUDENT


- Situations that arise:
 - Parent shows up at school wanting to see student during the school day.
 - Parent shows up at school wanting to remove student during the school day.
 - Parent shows up at school wanting to pick up student after the end of the school day.
 - Step-parent shows up at school requesting any of the above situations.



ACCESS TO STUDENT


- Parent participating in/attending school activities
 - Private activities vs. public events (i.e., lunch during the school day vs. choir concert)
 - Issue: What if a protective order is in place?
- District always has control over who can have access to school grounds.

EXAMPLES


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- Example 5: Parent E shows up at the school building demanding to see Student E. The building principal has never met Parent E before, but he has court documents stating he has primary care of Student E. What should the school district do?

EXAMPLES


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- Example 6: Mother F shows up at the school building demanding to take Student F with her. The building principal has never met Mother F before, but she has valid court documents stating she has primary care of Student F that were entered by the court yesterday. The school district contacts Father F who demands that the school district contact the police because Mother F should not have access to Student F. What should the school district do?

EXAMPLES


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- Example 7: Father G shows up at the school building at the end of the school day demanding to take Student G with him. The building principal has never met Father G before, but he has valid court documents stating he has primary care of Student G. The school district contacts Mother G, who does not pick up. In talking with Student G, she is nervous to go home with Father G and does not want to do this. What should the school district do?

EXAMPLES

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- Example 8: Step-parent H shows up at the school building saying she is there to pick up Student H for Father H. The building principal knows that there is a contentious custody battle going on between Father H and Mother H. Step-parent H is not authorized to pick up Student H. What should the school district do?

EXAMPLES


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- Example 9: Parent I contacts the school district and says he wants to come to each lunch with Student I once per week during the school day. According to court documents, Parent I only has visitation every other weekend. What should the school district do?

EXAMPLES


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- Example 10: Mother J contacts the school district and says she wants to attend Student J's 6th grade basketball game. Mother J and Father J were involved in a contentious custody battle, and the building principal knows that Mother J does not have primary custody/care of Student J. What should the school district do?



STUDENT RECORDS


- **Legal Custody vs. Parental Rights**
 - Legal Custody - an award of the rights of legal custody of a minor child to a parent under which a parent has legal custodial rights and responsibilities toward the child. Rights and responsibilities of legal custody include but are not limited to decision making affecting the child's legal status, medical care, education, extracurricular activities, and religious instruction. Iowa Code § 598.1(5).
 - Parental Rights - exist for each legal parent *unless* terminated via court proceedings (by other parent or by DHS)



STUDENT RECORDS

- **Custodial Parent vs. Non-Custodial Parent**
 - Iowa custody law providing parents rights to access educational records vs.
 - Family Educational Rights and Privacy Act (FERPA) providing parents rights to access educational records
 - Other individuals?
- Right to receive vs. Right to access
- Protective Order (or other court document limiting right to receive/access student records) in place


Have to provide both parents copies of documents → NO
- provide access → YES



EXAMPLES


- **Example 11:** Mother K has sole legal custody of Student K according to court documents the school district has in its possession. Father K requests a copy of Student K's student records. What should the school district do?
 - What if there is a provision in the court documents stating that Father K has no right to access Student K's student records?

EXAMPLES




- Example 12: Father L requests that the school district remove Mother L from the school's official records for Student L. He provides a court document stating that he has sole legal custody of Student L. What should the school district do?
 - What if Father L doesn't request that Mother L be removed completely, but only requests that Mother L not receive any of Student L's records when she requests them?

EXAMPLES



- Example 13: Step-mother M, who is married to Father M, requests copies of Student M's student records. Father M and Mother M have joint legal custody and shared physical care. What should the school district do?

RESOURCES



- Iowa Code citations:
<https://www.legis.iowa.gov/law/iowaCode>
- Iowa Department of Education residency chart:
<https://www.educateiowa.gov/resources/laws-and-regulations/legal-lessons/residency-issues>
- Iowa Department of Education student access/student records chart:
<https://www.educateiowa.gov/custody-court-orders-and-requests-records-march-2013-school-leader-update-legal-lesson>

QUESTIONS?
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