

## **\*Custody and Access Issues in the Education Context**

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There are numerous ways in which educators can be drawn into the crossfire of a marital separation. Here are some thoughts and suggestions for dealing with problems arising out of custodial disputes.

One parent usually has *de facto* custody, in that the parent continues to reside with the children, either in the family home or at a new residence. There may or may not be a court order in place determining the rights of the parents concerning the children. For ease of reference, I will refer to the parent who is residing with the child as the “custodial parent”.

1. **Get the facts before giving them:** We have made it a rule never to give any information about a student to a person seeking to identify whether his or her child is enrolled at the school until that person’s entitlement to the information is established. It is possible that the child has been moved to the new school to prevent the non-custodial parent from abducting or harming the child. Accordingly, it is imperative that administrators err on the side of caution.

Where there are allegations of domestic violence, there may well be criminal charges pending against the non-custodial parent. It can be expected that the bail conditions will include a prohibition against contact between the parents, and may also include a prohibition against contact between the non-custodial parent and the children, especially where the children themselves are alleged to be victims. In addition, courts sometimes specify that the parent cannot come within a certain distance (e.g. 200 metres) of the school.

Furthermore, pending resolution of the criminal charges and any family court proceedings, the court may have denied “access” by the non-custodial parent to the child. As will be discussed below, this may remove the right of the parent to information about the education of the child, including the school he or she is attending.

Unfortunately, in our experience, the court does not usually provide for notification to the school of the restrictions applicable to its premises and students. One would hope that the custodial parent would take steps to inform the school, but this does not always happen, in part because the custodial parent may not know about or understand the restrictions.

It is recommended that administrators ask the non-custodial parent if there are any court orders or “interim orders” in effect. If so, the parent ought to have no difficulty providing you with a certified copy of the order.

Administrators should also immediately contact the custodial parent to advise of the inquiry and to seek further information. In particular, if the parents have legal counsel, the administrator should obtain their names and telephone numbers.

2. **The Law:** Though much will be common to the various provinces and territories, an educator's duties will depend on the specific legislation.

For example, in Ontario, section 266(3) of the *Education Act*, R.S.O. 1990, c. E.2 provides that "A pupil, and his or her parent or guardian where the pupil is a minor, is entitled to examine the record of the pupil." The *Education Act* does not define who is to be considered a "parent", nor does it address the ability of a parent to obtain more general information, such as discussing the child's progress with the teacher.

On the other hand, the *Children's Law Reform Act*, R.S.O. 1990, c. C.12 deals extensively with custody and access issues. Section 20(1) provides that both the father and the mother of a child are equally entitled to custody, unless otherwise provided for by the legislation. A parent ~~is~~ living apart from the children remains entitled to access to the children, even though the parent may no longer have custody of the children. (s. 20(4))

In turn, "access" is defined to include the right to visit with the child and "the same right as a parent to make inquiries and to be given information as to the health, education and welfare of the child." (s. 20(5)) However, this definition of access may be altered and, indeed, entitlement to access can be removed entirely by the courts. (s. 20(7))

In our view, a parent who has been denied access in Ontario - and therefore excluded from the right to obtain information about the children's education - cannot be considered a "parent" for the purposes of the education legislation. In that event, the parent ought not to be given any information whatsoever, including which school the children are attending.

3. **Get help:** When parents are putting you in the middle, get help. In addition to your Supervisory Officer, the school board may be able to provide access to internal and external resources, police liaison officers, safe school advisors, social workers and lawyers who are experienced in dealing with custodial issues in the education context. Some circumstances may also warrant increased security or the assistance of a translator.

It is not uncommon for Principals to spend an inordinate amount of time dealing with the problems arising out of a marital dispute. Once a lawyer is involved, it may be possible to "move" the dispute out of the school, especially where the parents have legal counsel. The Principal's lawyer can immediately contact counsel, obtain the legal and factual details of the dispute and request that the parents cease to contact the Principal directly. In turn, the parents' legal counsel are often able to persuade their clients that inappropriate behaviour -

such as calling the Principal 20 times a day - must stop. While the Principal's role remains pivotal, the Principal is now required to communicate with only one person, being his or her own counsel.

Additionally, determining the Principal's and the school board's legal obligations in a given situation can require considerable expertise.

4. **Preserve the school for learning:** It is not uncommon for non-custodial parents to show up unannounced at the school asking, or demanding, to see their children before, during or after the school day. Each situation will be unique - for example, the parent may or may not have entitlement to access, the parent may or may not have the permission of the custodial parent, the parent may or may not have a legitimate reason to interrupt the school day.

What is certain is that a parent's unexpected visit can be extremely disruptive to the children. Additionally, no person, parent or otherwise, is entitled to interfere with the functioning of the school. Accordingly, education legislation usually provides that a Principal may exclude an individual from the school premises.

The exclusion remedy ought to be a last resort. Many parents will comply if asked politely not to attempt to gain access to their children through the school. In those rare cases where it is necessary to exclude a parent, the local police should also be informed.

5. **Avoid giving evidence:** You may find yourself being lobbied by one or both parents to testify on behalf of the one parent or "against" the other parent. It would be an unusual circumstance in which educators would voluntarily testify at a family court proceeding. Not only can this be very time consuming and stressful, it can be perceived by the other parent and/or the children as "taking sides".

There may be situations in which the educator is a material witness - for example, if the teacher has witnessed one parent assault the other. The party seeking this testimony ought to provide the educator with a subpoena requiring the educator to testify.

A tip: if a parent is seeking your testimony, do not mention the word "subpoena" - there is no need to give the parent any ideas (or legal advice).

6. **Cooperate with court appointed personnel:** The court may appoint a lawyer to represent the rights of the children, and the lawyer in turn will frequently request a meeting with the Principal and the children's teachers. A court could also appoint a neutral third party to investigate and make recommendations to the court. concerning custody and access.

Court appointed personnel will usually be given the power to obtain any information from the school that a parent would normally be entitled to. In those cases, the school is obliged to cooperate, so long as the investigation is limited to matters relating to the education of the children. Educators ought not to be asked to provide opinions as to which parent should have custody of the children.

7. **Update your records and procedures:** Review telephone and address information, as well as the emergency contact list for the children, and make the necessary changes. This will be particularly important if a child has a medical condition. All relevant staff must also be advised of a change in circumstances, especially if one parent is not to have any contact with the child or be on the school premises. Staff should be advised to call the police in the event a parent attends at the school premises in violation of a court order.

In family matters, emotions can run high. Remaining calm can help everybody involved.