

LEGAL CUSTODY OF CHILDREN

Background:

Disputes between parents or other family members may be complicated by the fact that legal custody of the child has not been court assigned. In such cases, de facto custody lies with the parent or guardian with whom the child lives. This does not mean the other parent and perhaps others in the family do not have guardianship rights and obligations. However, such persons claiming guardianship are required to prove to the Principal they have such status if the de facto parent or guardian denies they have such status.

While it is preferable to avoid becoming involved in a custody dispute, the protection and best interests of the child must be the determining factor in a Principal's decision whether or not to release a student to a person claiming guardianship, or even to release information regarding the student, including the fact of enrolment or where the student is enrolled.

Procedures:

1. A person claiming they are a guardian of a student must be referred to the Principal.
2. Where there is a demand for access to a student and legal guardianship is uncertain, the Principal shall:
 - 2.1. ask the claimant to identify themselves and produce a court order proving guardianship;
 - 2.2. inform the claimant the parent or guardian with whom the student lives shall be informed a claim for access has been made; and
 - 2.3. notify the parent or guardian with whom the student lives the claim for access has been made.
3. A record shall be kept in the school of any access claims that may be received, including dates, times, names and demeanour of persons involved, and a record of actual statements made.
4. When deemed necessary, the Principal shall inform the Superintendent of such demands for access.
5. Any request for access to a student or student information (for example, student report cards, etc.) from a parent or guardian with whom the student does not live shall be referred to the Principal.
 - 5.1. Such information may be released to an individual who has proven parental rights, provided the Principal has spoken to the child, the other parent and any other relevant persons to ensure there is no danger to the child or the other parent.
 - 5.2. An individual who is acknowledged by the other parent to be a parent of a child, and for whom there is no court documentation on file at the school restricting access to the child, is assumed to have parental rights unless the other parent indicates a danger to the child or the other parent.

- 5.3. If the other parent does not acknowledge the individual claiming parental status is in fact a parent, then that individual shall not be regarded as a parent unless proven by court order.
- 5.4. Principals are to use their discretion in dealing with such requests, bearing in mind that court orders regarding custody and access, guardianship, and parenting rights do not in any way bind the school staff or require them to take any particular course of action.
 - 5.4.1. The Principal and all school staff shall be guided only by the best interests of the child in making any decision regarding access to the student or student information.
 - 5.4.2. In no circumstance shall the Principal or other school staff members allow parents to put them in the position of being a referee in custody or access disputes.
 - 5.4.3. No court order regarding custody and access issues can direct the school staff to take specific action, and any court order purporting to do so must be brought to the attention of the Division Principal immediately.

Reference:

Section 1, 2, 11, 52, 53, 56, 196, 197, 222 *Education Act*
Student Records Regulation 225/2006
Child, Youth and Family Enhancement Act
Domestic Relations Act
Canadian Charter of Rights and Freedoms
Divorce Act
Family Law Act