



**Texas Association of School Boards**

Legal Services

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## **Family Law Basics for School Personnel**

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School officials face a variety of questions about family law and parental rights as they work to enroll students and partner with parents. This article addresses some of the most frequently asked questions in the school setting.

***Q: Why is it necessary for school officials to review a court order after a family court decides a case affecting a student?***

A: In a divorce or other proceeding affecting the parent-child relationship, courts can give and remove essential parental rights, including custody (called “possession”) and education-related rights. Generally, in a divorce, the court order will assign rights so that each parent has only the rights set forth in the order. Most court orders give both parents the right to attend school events, confer with school employees about the child, and see education records. In addition, most parents have the right to be listed as an emergency contact for the child. Typically, only one parent will be assigned the right to make educational decisions, such as deciding where the child will be enrolled or consenting to special education services. Sometimes, however, courts allow parents to share education decision making jointly, even after a divorce. See Texas Family Code, Title V.B., Chapters 151-153 for more information.

***Q: What if parents are estranged but not actually divorced, or were never married?***

A: Often parents operate separately but no court order guides their decisions. This can happen when parents never married, when they are separated but no divorce case has been filed, or when one parent is incarcerated. Absent a court order or temporary order (often entered by a court at the beginning of a divorce proceeding), both parents share equal rights of access and decision making for the child. See Tex. Fam. Code § 151.001 (enumerating the rights and duties of parents).

***Q: What if only one parent enrolls the child and communicates with the school?***

A: If only one parent is present and working with the school in the parental role and the school is not aware of another parent, the school may rely on the enrolling parent’s consent and guidance for all education decisions.

**Q: *What if a student is enrolled by someone other than a parent, like an aunt?***

A: In the absence of a parent or legal guardian, school officials can accept another person showing evidence of legal responsibility for a child other than a court order to substitute for a guardian or other person having lawful control of the child under a court order. Tex. Educ. Code § 25.001(j). The school can rely on this individual to enroll and make decisions for the child in the absence of a parent or guardian. Accepting guidance from this individual may be the best a school can do when a child has a legal right to enroll and no other present individual stands in parental relation to the child. That said, relying on a nonparent to fulfil the role of parent can be murky from a legal perspective, particularly for issues requiring parental permission. Ideally, if a parent can be located, the parent will provide the caregiver with a power of attorney. For more information, see TASB Legal Services' publication [Compulsory Attendance and Truancy](#).

**Q: *What is a power of attorney?***

A: An individual, including a parent, may sign a legal document to assign to another competent individual the right to act on his or her behalf for certain purposes. This document, called a power of attorney (POA), has legal effect but is not a court order. The assignment of rights is purely voluntary and can be revoked at any time. For example, a parent who is going to be temporarily absent and is leaving a child in the care of a grandparent may sign a POA authorizing the grandparent to act on the parent's behalf for education and medical decisions while the parent is away. The individual assigned temporary rights does not have to agree to the assignment by signing the POA. Of course, a parent can assign only the rights he or she has; if a parent's rights have been terminated by a court order, the POA will be ineffective. Tex. Est. Code § 752.001.

Rather than using a formal POA, a parent may use another method of assigning temporary parental rights by using the Department of Family and Protective Services (DFPS)'s [Authorization Agreement for Voluntary Adult Caregiver](#) form. Both the parent and designated adult caregiver must sign the DFPS form for the form to be effective.

**Q: *What if a person claiming to be a biological parent shows up out of the blue and wants to see or withdraw the child?***

A: If a school has been interacting with only one parent or caregiver (like a step-parent or other relative) for a long time, and a person not known to the school arrives and wants to assert parental rights, school officials may understandably be hesitant to recognize the individual's rights. Ideally school officials will have a procedure for how to respond that will honor the rights of both parents. First, the school will want to verify the new individual's identity and relation to the child. If the individual has identification and is listed in the child's records as a parent, or if the individual can show through a birth certificate or court order that he or she is the child's parent, the school should treat the individual as a

parent—*unless* the known or enrolling parent is able to show that the new parent’s rights have been terminated or modified by a court order. If the known parent or caregiver is unable to provide such evidence, the new individual will have full parental authority to view records, interact with school staff, attend activities, and even withdraw the child.

Remember that it is always permissible and advisable to inform the known parent when a new parent enters the scene. If the new parent is requesting to remove the child from school, and the known parent asks the school not to release the child, explain that the school does not have authority to withhold a child from his or her parent absent a court order. That said, school personnel may choose to walk through the steps for withdrawal slowly enough to give the known parent time to arrive on campus. Ideally, the two parents can reach a mutual agreement, if only temporary, as to how to resolve the situation in the best interest of the child. If the situation seems tense, or the enrolling parent alleges concerns for the child’s personal safety, call for support from law enforcement.

***Q: What if parents disagree about an education decision?***

A: First, if there is an applicable court order, consult the order to see if one parent is given sole decision making authority over education. If so, that parent’s decision controls. If the other parent is unhappy, he or she will need to address the concern with the family court. Tex. Fam. Code §§ 153.132, 156.001.

On the other hand, if there is no court order or an order gives both parents joint education decision making authority, the school may have to be patient while the parents work toward a joint decision. The school can play a supportive role by providing information to both parents, but ultimately the parents may need to resolve their dispute through the family court. School administrators should politely decline parent requests to “choose who is a better parent” or otherwise arbitrate family disputes.

***Q: What if parents are divorced and the court order calls for a standard possession schedule, but the children’s mother picks them up from school every day?***

A: Parents are allowed to, and often do, set aside the standard possession order and make their own custody schedule based on mutual agreement. The standard possession order is a fall back for times when parents cannot agree among themselves. This flexibility means that school personnel may not always know when parents have made their own plans for pick up and drop off. Whenever possible, remind parents that—for their child’s safety—school personnel would appreciate advance notice (even a quick call or email) if parents are going to alter their typical routine for school pick up, especially for young children. Moreover, if parents begin to disagree with each other or school personnel about the schedule, school officials can ask the parents to provide written notice about alterations to the standard possession order. Tex. Fam. Code § 153.311.

***Q: What if parents are divorced, and one parent wants to eat lunch in the school cafeteria every day but the other parent does not want the school to allow this?***

A: Typically, a divorce decree will state that both parents are allowed to attend school activities, regardless of which parent has possession of the child at the time of the event. Many school districts allow parents to visit their children at lunch time. Unless limited by a court order, a parent appointed as a conservator has a right to attend school activities, including school lunches, performances, and field trips. Tex. Fam. Code § 153.073(a). If both parents have an equal legal right to attend the school activity of lunch, school personnel will want to monitor the situation to be sure the visits do not disrupt the lunchroom or the educational and emotional needs of the child while at school. Depending on the circumstances, a school official may ask disruptive parents to limit their visits or ask each parent to choose a different day of the week to visit.

***Q: What if parents are not getting along and both want to attend the child's parent-teacher conference?***

A: Parent-teacher conferences are clearly school activities, and both parents should be invited to attend (regardless of the possession schedule, and regardless of whether the parents have equal decision making authority) absent a court order limiting or terminating one of the parent's rights. Most parents are able to attend and participate in parent-teacher conferences together, without undue conflict. If, however, the school has reason to believe that parents will not be able to listen and participate productively at a shared conference, a teacher may decide to hold a separate conference for each parent.

***Q: What if a student's father wants his new wife (or his girlfriend, or his mother) to pick up the student after school?***

A: Individuals like step-parents, parents' significant others, grandparents, aunts and uncles, and others may play an important roles in students' lives. They may, for example, provide significant childcare and transportation; however, unless a court has awarded an individual legal rights through a court order—for example, through adoption or by appointment as a legal guardian—the rights of step-parents, significant others, grandparents, and other family members are inferior to the rights of a student's actual parents. During a parent's period of possession, the parent may delegate his or her rights to another competent adult. For example, when it's the father's day to pick up the child at school, he may follow the school's procedure to designate his new wife as the person who will pick up the child, even over the mother's objection. During the mother's period of possession, she will call the shots.

**Q: What happens when school records are subpoenaed during a family court proceeding?**

A: During a family court proceeding, it is not uncommon for an attorney representing a child's parent to subpoena the child's school records. Usually parents' attorneys want to review the records to explore how (for better or worse) parenting may be affecting matters like a child's academic performance, conduct, attendance, or health. If school records are all that an attorney is seeking, the subpoena may be a "subpoena duces tecum," which is a special subpoena to request the production of records along with an affidavit affirming that the records are authentic. If, however, the attorney wishes to ask a school employee questions in addition to seeking records, the subpoena may require the employee to both produce records and appear in person to give a deposition or testify in court.

**Q: What happens when school officials are asked to testify in family court?**

A: Most people feel anxious about testifying in court, and school employees may feel particularly wary about being asked for observations and opinions about a student and his or her parents in a legal proceeding. Nevertheless, the consequences of ignoring a subpoena are too severe to even consider failing to appear without taking the appropriate legal steps to respond. First, inform the school district's attorney about the subpoena immediately. The district's attorney will be able to determine whether the subpoena is legally valid. If the time for appearance is onerous, the district's attorney may be able to informally arrange a different time for appearance or even quash the subpoena. Ultimately, however, with a properly served subpoena, a school employee may be compelled to testify. School employees should work closely with counsel to feel confident and prepared as they fulfill this legal obligation to provide relevant, truthful testimony.

For more information about civil subpoenas, see this [guidance](#) from the State Bar of Texas.

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/family-law-basics-for-sch-personnel.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Students/documents/family-law-basics-for-sch-personnel.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schollawesource.tasb.org](https://schollawesource.tasb.org).

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