

## **CUSTODY ISSUES: Overview**

*First answer: What type of custody?*

**Legal custody** gives a parent the right to make decisions for a child. When two parents separate or divorce, they can agree to share legal custody, which is called “joint legal custody.” This means that both parents have the right to make decisions, including educational decisions, for the child. If only one parent has legal custody, it is called “sole legal custody.” In this case, only that parent can make decisions for the child.

**Physical custody** controls where a child lives. When parents have “joint physical custody,” the child lives with one parent some of the time, and the other parent some of the time. When one parent has “sole physical custody,” the child lives with that parent all the time.

*Who has the right to see a child’s educational records?*

Both parents usually have the right to see a child’s school records and join in school activities. However, a judge can issue a court order that keeps either parent (or both parents) from seeing a child’s records. For that reason, a custody agreement or court order has to clearly spell out any limits on access to school records or contact by either parent. Otherwise, a parent can see a child’s records, even if the child does not live with that parent. In fact, a school will assume that both parents have the right to see a child’s education records unless the school has been provided a court order or other information that says a parent can’t see the records. A court order from a domestic violence proceeding can also limit a parent’s right to see her child and that child’s school records.

*Who has the right to make educational decisions for a child?*

A custody order or agreement can give only one or both parents the power to make educational decisions. Both parents also have the right if the order does not mention who has decision-making power.

### **Special Education Decisions**

If a child is in special education, custody rights also affect who can come to Individualized Education Program (IEP) Team meetings and make special education decisions. If the parents have joint legal custody, they can both make educational decisions for a child. They can both approve or not approve an IEP or ask for a due process hearing. **Only one parent** has to agree with the school district’s proposal before the district can take whatever action it has proposed. *If the other parent does not agree with the decision, he or she has to ask for a new IEP meeting or due process hearing to try to change it.* The parent who disagrees can also go to court to change the custody order so that he or she is the only person allowed to make educational decisions for the child.

If only one parent has legal custody, the other parent still has the right to know about the child’s special education program and the right to sit in on IEP Team meetings, unless a custody order says he or she can’t. However, only the parent with legal custody can approve or not approve an IEP and ask for a due process hearing for the child.



## **The Rights of Custodial and Non-custodial Parents of Special Education Students**

The following guidance has been developed in conjunction with the Oregon Department of Education:

### **Parent Status: Married**

- Basis of Knowledge: School registration form
- Access to Records: Both parents have access to student records
- Meeting Notice: Invite both parents to participate in all meetings related to identification, evaluation, IEP and placement and provision of FAPE
- Meetings: Include both parents in discussion and in consensus decision-making
- Prior Written Notice: Address all PWNs to both parents
- Consent/Other: Address all requests for consent to both parents; need only one parent's consent for evaluation and initial placement into special education services; either parent (or both) may request due process hearing

### **Parent Status Divorced with joint legal custody**

- Basis of Knowledge: School registration form lists parents. District may presume this information is correct unless put on notice otherwise by a parent. A custody or divorce decree should specify custody arrangements. The determinative factor is whether there is joint legal custody, regardless of whether one parent has sole physical custody. A person asserting that a parent's rights have been limited or revoked by a divorce, separation, custody or termination of rights should be asked to provide evidence of a current court document to that effect. A parent without physical custody who asserts legal rights may be asked to provide evidence of a current court document to that effect.
- Access to Records: Both parents have access to student records
- Meeting Notice: Invite both parents to participate in all meetings related to identification, evaluation, IEP and placement and provision of FAPE
- Meetings: Include both parents in discussion and in consensus decision-making
- Prior Written Notice: Address all PWN to both parents
- Consent/Other: Address all requests for consent to both parents; need only one parent's consent for evaluation and initial placement into special education services; either parent (or both) may request due process hearing

### **Parent Status: Divorced with one parent having legal custody**

- Basis of Knowledge: School registration lists one parent; a person asserting that a parent's rights have been limited or revoked by a divorce, separation, custody or termination of rights must provide evidence of a current court document to that effect
- Access to Records: Both parents have access to student records unless noncustodial parent's rights to access records has been specifically limited by court order. Non-custodial parent has the right to access information about student, both in documentary form (e.g., requesting student records, requesting to receive all mailings) and in narrative form (e.g., attending parent-teacher conferences and IEP meetings). This includes a copy of a draft IEP, if a copy is sent to the custodial parent
- Meeting Notice: Invite both parents to participate in all meetings related to identification, evaluation, IEP and placement and provision of FAPE

- Meetings: Invite both parents to participate in all meetings related to identification; evaluation, IEP and placement, and provision of FAPE; only parent with legal custody would participate in consensus decision-making
- Prior Written Notice: Both parents should be given PWN
- Consent/Other: Address all requests for consent to parent with legal custody. Need consent from parent with legal custody for evaluation and initial placement into special education services. Non-custodial parent can request due process only regarding the right to obtain information and participate in meetings.

#### **Other Issues**

- Both custodial and non-custodial parents have the right to visit their child at school, attend school functions, and volunteer in the classroom. This general right can be modified either by a court order (e.g., limiting or prohibiting one parent in a specific manner) or by the school (any parent's right to attend, participate, or volunteer can be modified or prohibited if doing so is necessary to protect the interest of the child, the other students and/or the teacher; for example, if the parent is disruptive). A parent's presence at school can be dictated pursuant to a specific protocol drafted by staff, so long as there is a reasonable basis for the limitations in the protocol, and so long as the protocol is not discriminatory (e.g., limiting the rights of parents of special ed students to observe in the classroom, but placing no limits on the rights of parents of regular ed students)
- Only the custodial parent (i.e., the parent or parents with legal custody, pursuant to a court order) has the right to remove the child from school. If the custodial parent wishes this right to be extended to the non-custodial parent, the custodial parent should place the non-custodial parent's name on the registration form in the section concerning which individuals are authorized to pick up the student.
- This does not address the situation where child resides with noncustodial parent and parent with legal custody cannot, with good faith effort, be located. In this situation, the noncustodial parent can be considered to have de facto custody and, as the only available parent for the child, should be treated as if the parent had legal custody (or "person in parental relationship")