



Custody and Access Administrative Procedure 1.B.70

1.0 School Administration
1.B. Students

Board Governance Policy Cross Reference: 1, 2, 3, 16, 17

Administrative Procedure Reference: 1.A.130 Right to Attend

Legal Reference: *Public Schools Act, Child and Family Services Act, The Court of Queen's Bench Surrogate Practice Act, Divorce Act, 16(5), The Family Maintenance Act, 39(34)*

Date Adopted: August 1996

Date Amended: October 2014, October 2024

Evergreen School Division respects the rights of custodial and non-custodial parents equally unless court orders exist with special restrictions. It is the responsibility of the custodial parent to provide the school principal with a copy of such a court order if restricted access to student(s) and/or student(s) information is requested. It is the responsibility of the non-custodial parent to inform the school office their name, address, and telephone number if they wish to be consulted regarding their child or wishes to be placed on the school's mailing list.

The Division also respects and recognizes legal guardianship and the rights assigned to legal guardians as defined in relevant legislation.

Definition of "legal guardian"

A legal guardian is defined in the *PSA* as "a parent or person appointed or recognized as the guardian of a child under *The Child and Family Services Act* or *The Court of Queen's Bench Surrogate Practice Act*.

According to the *Child and Family Services Act*, "guardian" means a person other than a parent of a child who has been appointed guardian of the person of the child by a court of competent jurisdiction or to whom guardianship has been surrendered under section 16 of the *Child and Family Services Act*. The legal guardian of a child in the care of Child and Family Services is the social worker, and not the foster parent.

If the legal guardian is someone other than a biological parent, schools should have documents in the student's pupil file that identify who has guardianship/legal authority of a child. This documentation must be legal documentation from the courts that:

- a. Grants them custodial and decision-making responsibility for the child; or
- b. Denies an individual access to the child.

An example of documentation that would not be acceptable is a letter signed by a biological parent granting custody of their child to another individual (even if it has been notarized/witnessed by a lawyer).

Both custodial and non-custodial parents and legal guardians have the right to:

- a. View the student(s) school records.
- b. Receive school progress reports and all school mailings.
- c. Attend student conferences.
- d. Visit the child briefly at school (if the conditions in procedure #3 below are met).

Except when a court order exists concerning special restrictions.

Procedures:

1. The principal must read court orders carefully.
2. The school can and must act to honor a court order which clearly defines the custody arrangement. Parents should be cautioned to keep the school closely informed about custody matters so that the school can take appropriate measures to see that judicial orders are upheld.
3. If a non-custodial parent asks to visit with a child at school without prior consent from the custodial parent or guardian, the following steps will be taken:
 - a. The principal will discourage the meeting occurring during school hours.
 - b. If the non-custodial parent insists on the meeting, the principal will contact the custodial parent or guardian and inform them of the request and the conditions under which the visit will occur.
 - c. If the custodial parent or guardian objects, the student will not be summoned to the office and the non-custodial parent will be asked to leave the school.
 - d. If the custodial parent or guardian agrees, a request will also be made to the student.
 - e. If the student agrees to the meeting, the student will be summoned to the office and remain in the office area for the duration of the visit. The visit will take place in an area that can be observed by office personnel to ensure the physical and emotional safety of the student.
 - f. The student will be returned to class at the end of the visit.
4. The Division provides that only the custodial parent or guardian has the right to remove the child from the school. A non-custodial parent, who asks to remove a child from school, may do so with prior written consent from the custodial parent or guardian. The principal may wish to contact the custodial parent or guardian and verify consent.
5. Problems may arise when parents are not legally separated, and there is no court order. Under such circumstances, either parent has access to their child.
6. All staff are to be informed of court orders. Information of access/court orders are to be recorded on school information records and be readily available.
7. Substitutes are to be informed in substitute instructions by classroom teacher.
8. Bus drivers are to be informed of court orders by principals.
9. Agency workers must provide appropriate documentation and identification before access will be granted to students.
10. Where illegal access is an issue, practice like photographs or "code" words may be arranged with custodial parents.

Documents such as applications for special needs funding, individual education plans, and other documents which would otherwise be signed by a biological parent, would be signed by the legal guardian where one has been appointed. When the legal guardian is agency appointed (e.g., a social worker), please have them indicate their title/role and agency along with their signature.

FOR FURTHER INFORMATION:

- <http://web2.gov.mb.ca/laws/statutes/ccsm/p250e.php>
- <http://web2.gov.mb.ca/laws/statutes/ccsm/c080e.php#1>
- *Divorce Act*, 16(5)
- *The Family Maintenance Act*, 39(34)