

<b>ADMINISTRATIVE PROCEDURES</b>	
Administrative Procedure Section <b>FOI/RECORDS MANAGEMENT</b>	Policy Number <b>302</b>
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## **ADMINISTRATIVE PROCEDURE TITLE**

Custody and Access to Students by Parents/Guardians

### **1.0 ADMINISTRATIVE PROCEDURE**

- 1.1 All claims for the custody of students will be referred to the principal.
- 1.2 Unless a written Separation Agreement or Court Order to the contrary has been provided by either parent, both parents are equally entitled to custody of and access to their child. More particularly, either parent, independently, may exercise the rights and accept the responsibilities of a parent with respect to the child.
- 1.3 As indicated in the definition of access, a parent with a right of access to a child is entitled to request and to be provided with information regarding his or her child's education, health, and welfare. Conversely, a parent without a right of access is not entitled to such information.
- 1.4 The equal entitlement of both parents to custody and access may be altered by the fact of the parents living separate and apart, by a written Separation Agreement between the parents or by Court Order. Either parent may provide the Separation Agreement or Court Order that identifies the legal custody and access arrangements.
- 1.5 Where parents live separate and apart, and the child lives with one of the parents, the right of the other parent to exercise his or her custodial rights, but not the right to access, is suspended until a Separation Agreement or Court Order provides otherwise.
- 1.6 The access rights of a parent, regardless of whether or not the child lives with that parent, may be varied or denied only by written Separation Agreement or Court Order.
- 1.7 In response to a request for physical access to a child from a non-custodial parent, the principal will provide access based on the provisions

of the written Separation Agreement or Court Order contained in the Ontario Student Record (OSR), and in consideration of the safety and best interests of the child.

- 1.8 Where there is a demand made of the principal or school for custody of a student and legal custody is uncertain, the principal will:
- ask the claimant to identify himself or herself and to produce a legal order for custody;
  - inform the claimant that the student will not be released from school until the normal dismissal time, and the parent or guardian with whom the student lives will be informed that a demand for custody has been made; and
  - enforce the terms set out in the provisions of a written Separation Agreement or Court Order.
- 1.9 Where a parent seeks to exercise access rights which have been terminated or denied by a Separation Agreement or Court Order, the principal will not allow access. The principal will take reasonable steps to prevent unauthorized access to a student by his or her parent, including, where necessary, contacting the police for assistance and intervention.
- 1.10 The principal and school have the right to control access to school grounds. However, if a parent/guardian insists on seeing his or her child during school hours when access to the child has been denied by a Court Order, Judgment, or Separation Agreement, the principal will:
- (a) inform the requesting parent/guardian of the Board's policy;
  - (b) inform the requesting parent/guardian that the school has a copy of the Court Order or Judgment refusing access;
  - (c) suggest to the parent/guardian requesting access that he or she consult with his or her solicitors;
  - (d) inform the requesting parent/guardian that, should the parent/guardian force the issue, the principal will call the custodial parent/guardian and the police;
  - (e) inform the requesting parent/guardian that the school may seek legal advice from the supervisory officer and that absent a further Court

Order varying the existing Order or an Agreement amending the existing Separation Agreement, that the school must comply with the existing Order or Agreement; and

- (f) the principal will follow the advice of the police and the Board's legal counsel and the direction of the courts.
- 1.11 The legal rights granted to a guardian with respect to the custody of a child may only be varied by a Court Order.
- 1.12 It is the parent's/guardian's responsibility to notify the school with respect to any changes to custody or access rights and to provide the principal with a copy of the most recent applicable Separation Agreement or Court Order at the earliest opportunity. Documentation affecting custody or access rights of parents/guardians with respect to their child will be retained in the OSR.
- 1.13 Where significant concerns are present, the principal will not provide access until such time as direction is received from the superintendent of schools and/or legal counsel.
- 1.14 The principal will make record of any incidents involving custody claims, including dates, times, names, and demeanor of persons involved, with as much detail as possible.
- 1.15 Any staff member asked to provide information or testimony to a parent's lawyer about the school or the child's education for legal purposes will refer the matter to the principal.
- 1.16 The school will not be the drop-off and pick-up location for students whose parents are arranging visiting rights. Visiting arrangements are to be made between the parents and are not to involve the school, staff, or school property.
- 1.17 Requests for parent-teacher interviews by the non-custodial parent will be arranged by the teacher. Generally, there will be one parent-teacher interview per child scheduled during the reporting period to which both parents will be invited. Alternate arrangements must be discussed with the teacher and the principal.
- 1.18 A step-parent or common law partner will have no right to access students or information about the student unless the step-parent or common law partner has become an adoptive parent or access is provided for in a written Court Order.

- 1.19 A student who is over the age of 16 years and under the age of 18 years, and eligible for student welfare through the Ontario Works program, is deemed an independent student. Parent access to the student and/or information about the student will only be permitted if the student provides written consent.
- 1.20 A restraining order will be enforced by the principal to protect a child from a parent who is restrained by the Order. The principal will inform school personnel that violations of “no abuse”, “no contact”, and “stay away” provisions of a restraining order are criminal offences, and that law enforcement officials will be contacted if the Order is being breached at school.

## **2.0 TERMS AND DEFINITIONS**

### **2.1 CUSTODY**

Custody refers to the rights and responsibilities of a parent in respect of a child, including the right to physical access and the right to make decisions with respect to the child’s health, education, and welfare, in the best interests of the child.

### **2.2 LEGAL CUSTODY**

The parent with legal custody can make all decisions regarding the health, welfare, and education of the child.

### **2.3 PHYSICAL CUSTODY**

Physical custody determines which parent has the actual, physical right to be with the child and to have the child with him or her.

### **2.4 SOLE LEGAL CUSTODY**

One parent is awarded sole legal custody; that parent makes all decision regarding the health, education, and welfare of the child (and the other parent has no input on these decisions).

## 2.5 SOLE PHYSICAL CUSTODY

One parent is given sole physical custody; the child remains with him or her and the other parent is excluded from having physical custody of the child (for example, when the other parent has neglected or abused the child).

## 2.6 JOINT LEGAL CUSTODY

Both parents participate in reaching decisions regarding the health, education, and welfare of the child.

## 2.7 JOINT PHYSICAL CUSTODY

Both parents have the ability to be with the child. Typically joint physical custody is coupled with a parenting plan to determine who will be with the child at what particular time.

## 2.8 ONTARIO STUDENT RECORD (OSR)

The OSR is the record of a student's educational progress through schools in Ontario. The *Education Act* requires that the principal of a school collect information "for inclusion in a record in respect of each pupil enrolled in the school and to establish, maintain, retain, transfer and dispose of the record". The *Education Act* also regulates access to an OSR and states that the OSR is "privileged for the information and use of supervisory officers and the principal and teachers of the school for the improvement of instruction" of the student. Each student and the parent(s) of a student who is not an adult (that is, a student who is under the age of 18) must be made aware of the purpose and content of, and have access to, all of the information contained in the OSR.

## 2.9 SHARED CUSTODY

Shared custody is where both parents equally share the legal and physical custody of the child. This is typically found only where both parents are able to resolve their personal differences and keep them in check for the sake of raising the child in a caring, nurturing environment.

## 2.10 GUARDIAN

Guardian is defined as a person, other than a parent, who has lawful custody of a child, as established by Court Order.

## 2.11 ACCESS

Access includes the right to visit with and be visited by the child and the same right as a custodial parent to make inquiries and to be given information as to the health, education, and welfare of the child, subject to any restrictions or conditions on those rights which are contained in a Separation Agreement or Court Order.

## 2.12 CUSTODIAL PARENT

The custodial parent is the term that is used for the parent who has primary physical custody of a child. Typically, the child resides with the custodial parent. Often the child is either with the custodial parent or the non-custodial parent, but not both. This arrangement comes about as a result of the separation of the parents and both parents maintaining separate residences. The child resides with the custodial parent most of the time and the non-custodial parent spends time with the child during periods of child access or visitation. This way, both parents are able to spend time with the child, despite having separate residences.

## 2.13 NON-CUSTODIAL PARENT

The term non-custodial parent is used for the parent who has the child for a lesser amount of time. Typically, the child does not reside with the non-custodial parent except during the time that the non-custodial parent exercises his or her access or visitation rights with the child.

## 2.14 RESTRAINING ORDER

A restraining order is a Court Order issued to protect a person from being molested, annoyed, or harassed by another person. A person can get a restraining order to protect himself or herself or his or her child. The person seeking the order must show the court that the person he or she wants the restraining order against has molested, annoyed, or harassed him or her or his or her child. The order is not limited to situations of physical or sexual abuse. Rather, such an order may issue in a variety of situations involving persistent and harassing or distressing behaviour in the context of a custody and access dispute. It is also required that the person against whom the order is sought be or be made a party to custody and access litigation. This typically means that the person claiming the order and the person against whom the order is sought are related in that they:

- are currently married or used to be married to each other;
- have lived together;
- have had a serious, intimate relationship;
- have a child together; and/or
- are related by blood or marriage.

### **3.0 REFERENCES/RELATED DOCUMENTS**

Education Act, R.S.O. 1990, c.E.2, Section 305  
Ontario Regulation 474/00, Access to School Premises  
Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990,  
c.M.56  
Children's Law Reform Act, R.S.O. 1990, c.C.12, as amended  
Family Law Act, R.S.O. 1990, c.F.3, as amended  
Child and Family Services Act, R.S.O. 1990, c.C.11, as amended  
Divorce Act, R.S.O. 1985 (2<sup>nd</sup> Supp.), c.3, as amended  
Restraining Order Checklists - Appendices A and B

### **4.0 RELATED ADMINISTRATIVE PROCEDURES**

AP-FOI-303, Parental/Guardian Access to Student Information  
AP-FOI-304, Ontario Student Record (OSR)

### **5.0 RELATED FORMS**

### **6.0 ADMINISTRATIVE PROCEDURE REVIEW DATE**

March 2014

### **7.0 APPROVED BY BOARD**

March 24, 2009

### **8.0 EFFECTIVE DATE**

March 24, 2009

**9.0 REVIEW BY**

Communication Services

**10.0 LAST REVISION DATE**