



4 Tips for Private and Independent Schools to Avoid Getting Caught in the Middle of Custody Disputes

Insights

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It seems private and independent schools are finding themselves in the unlikely and undesirable position of being entangled in family custodial and court proceedings more frequently than ever. Given the increase in divorced or separated parents, unmarried parents, co-parents, or individuals having children without a partner, schools are having to address an ever-evolving universe of custodial issues. This diversity of family structure means that you often face difficult situations when parental disagreements over child-related matters are brought to your doorstep. How can you best protect your school and navigate these thorny issues? Here are the four most common situations that schools might face in this area – and guidance in addressing how to best handle such disputes.

4 Tips to Minimize Disruptions

Generally speaking, parents share equal legal rights over their children, including when it comes to physical custody, making decisions about their child's education, and having access to the same school-related information. That means that unless there is a court order or an enforceable written agreement between the parents that indicates otherwise, both parents have equal rights with respect to their children. Despite this relatively simple formula, schools often find themselves in the middle of a family tug-of-war. Following this guidance will help you navigate these sticky situations.

1. What should you do if a parent tells you the other parent is not to pick up their child or have access to their educational records?

Ask the parent for a copy of a court order imposing those limitations. Do not rely on the representation of the parent – or even their attorney – without reviewing the official court order yourself. If you have any questions about how to interpret the order or if a parent claims that your school is misinterpreting custody documents, you should consult with your school attorney to help review and assess the documents.

You may also include a provision in your handbook or enrollment contract requiring each parent provide the school with an official and complete copy of any applicable custodial order or divorce decree at the beginning of the school year, or when such documents are substantially revised. Often educational matters are addressed in several places throughout an order or decree, so we don't recommend accepting cut-and-pasted sections of an order or decree.

2. Is there a proactive approach schools can take to avoid getting caught in the middle of contentious divorces?

The key is to communicate your expectations to parents. To do so, you may want to add a policy to your school's Parent/Student Handbook – and perhaps a clause to your enrollment agreement – to explain that a parent must provide a valid court order to your school if they believe the other parent should be restricted from receiving information about their child, visiting, picking up, or dropping off their child, participating in parent-student conferences, and so on. The policy should also make clear that parents are under an ongoing obligation to provide the school with new or subsequent orders evidencing such restrictions promptly upon issuance.

Similarly, your school may want to consider adding a “cooperation clause” to your handbook and/or enrollment agreements to make clear that you expect both parents to cooperate with the school – and with one another – in the best interests of their child's education. The cooperation clause should address the potential consequences for failure to cooperate, such as dismissal of the child or non-renewal of enrollment for future academic years in extreme cases.

Additionally, your school might consider a provision that allows you to require parents to seek a court order if a dispute arises over a matter on which the school needs guidance. For example, many schools wished they had such a provision when parents were arguing over whether their child should attend school in-person or remotely during the pandemic.

Your handbook may also address other issues that are related, such as procedures for dismissals and early releases, parent-teacher meetings, and access to student records.

3. What if, despite your school's best efforts, parents continue to drag you into their dispute?

If parents' behavior becomes disruptive, you may want to send them a letter re-asserting the basic rules of the road. These include:

- The school will not restrict access to a child or information from another parent unless a court order specifically requires you to do so.
- The school will not become involved in or act as decision-maker in any parental disputes or arguments.
- The school will not contact a parent every time the other parent calls or visits.
- The school will make an extra effort to keep both parents apprised of their child's progress by making the same information available to both parents. However, this does not mean that you will refrain from speaking individually with a parent about a child's progress or concern.
- The school expects that both parents will communicate with each other if there is something about their child that needs to be addressed. Along these lines, you should encourage parents to copy one another on any written communication to the school.

You should also set forth the consequences for failing to comply with these expectations.

4. What should you do if a parent asks for school administration or employees to speak with their divorce attorney, testify on a parent's behalf, or provide documentation to their lawyer?

You should let the parent know that your employees will not voluntarily speak with the parent's lawyer or provide letters or documents to lawyers. If special circumstances arise leading your school to do so for some reason, be sure the school's legal counsel is involved.

Of course, if the school or a school employee is served with a subpoena through the normal court process, you should respond and testify truthfully. If that happens, you should notify your school's attorney immediately so they can assist you. Certain protective actions must be taken very quickly, such as when a subpoena is unduly burdensome, so time should be of the essence.

Unfortunately, becoming involved in these legal disputes can become very expensive for schools. As such, a number of schools have also opted for a provision in their enrollment contracts and/or handbooks requiring parents to reimburse the school for all expenditures, including legal fees, incurred because of the parent's legal disputes. You should check with your school's legal counsel about the enforceability of these provisions in your state.

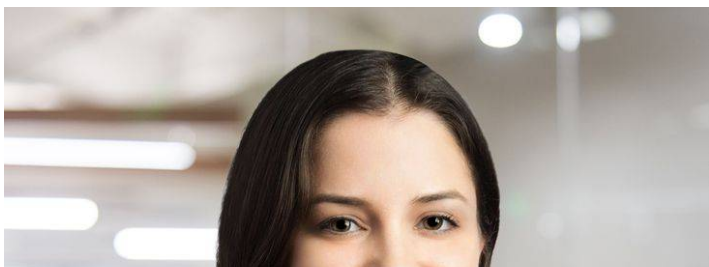
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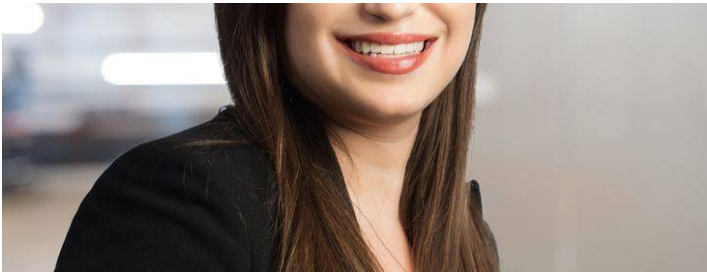
There are proactive steps that schools can take to avoid getting caught in the middle of custody disputes. Nonetheless, you should be prepared to address situations where parents refuse to cooperate with one another and with the school.

Schools should seek guidance from your Fisher Phillips attorney as to how to best implement these types of policies and clauses in enrollment contracts, and how to navigate tricky custody disputes when they spill into the school environment. You can also contact the author of this Insight or any attorney on our Education Team with questions.

We will continue to monitor the latest developments and provide updates as warranted, so you should ensure you are subscribed to Fisher Phillips' Insight system to gather the most up-to-date information.

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