




NEBO SCHOOL DISTRICT ADMINISTRATIVE DIRECTIVE

Directive
No.
6.3

SECTION: STUDENTS
TITLE: CUSTODIAL / NONCUSTODIAL PARENT RIGHTS
DATE: MAY 2018
SUPERINTENDENT APPROVAL: 

1. Overview

1.1. Many students come from families in which the parents' custody rights have been determined by court order, either through divorce, paternity action, or some other proceeding. Due to the complexity and variety of custody orders received by the District and the many ways parents are involved in their children's education, questions frequently arise over the division of rights between parents in a school setting. This directive outlines some of those rights and provides direction for educating students whose parents are not married to each other.

1.2. Custodial versus Noncustodial

1.2.1. The term *custody* encompasses two parts: physical custody, which is where a child lives, and legal custody, which includes the rights, privileges, duties, and powers of a parent to make decisions regarding the child's life. While Utah law recognizes several custody arrangements (including sole legal and sole physical, joint legal and joint physical, joint legal and sole physical, and split custody), the term *custodial parent* usually refers to the parent with sole physical custody of the student. However, many divorce decrees do not clearly identify one parent as having sole physical custody, in which cases schools should consult with the Legal Department to determine the custodial and noncustodial parents.

1.2.2. Utah law provides that "any parental rights not specifically addressed by the court order may be exercised by the parent having physical custody of the child the majority of the time." UTAH CODE ANN. § 30-3-10.3(4). Thus, for purposes of this directive, in the event of a dispute between parents on an issue for which the decree or court order does not designate one parent as the decision maker, the parent who is awarded the most overnights with the child shall be considered the custodial parent. Notwithstanding the forgoing, if a decree or order awards the parents joint physical custody, both parents are considered custodial even if one is awarded more overnights than the other.

1.2.3. When custody is determined by the court, the arrangement is set forth in a court order, usually a divorce decree. When a dispute arises between parents, a copy of the most recent divorce decree or other court order should be requested from the parents and placed in the student's file. All court orders on file must be complete with all pages intact. They must be dated and signed by the judge (not just signed by attorneys or notarized), and also bear the stamp of the court. On newer court orders, this will be evidenced on the document by an electronic stamp and signature at the top of the first page. School personnel should flag student files in the Student Information System (SIS) that contain court orders. It is important to be aware of such court orders so that they can be accessed and reviewed when necessary. The most recently dated court orders govern and may refer to, modify, or supersede previous orders. Schools should contact the Legal Department for help determining custodial and noncustodial parents.

2. School Enrollment and Unenrollment

2.1. Utah law states that the school district of residence of a student is the district in which the custodial parent or legal guardian resides. However, because school personnel should not be required to interpret the multitude of custody arrangements and parenting plans found in divorce decrees,

schools should enroll a student if either of the student's parents, as identified on the student's birth certificate or court order, provides proof of residency within the school's boundaries.

- 2.2. If school personnel become aware that a student is attending or seeks to attend a school in whose boundaries the student's noncustodial parent lives but in which the custodial parent does not live, the student shall not be denied enrollment at the school solely because the custodial parent does not live in the school's boundaries. In such cases, the following conditions apply.
 - 2.2.1. The custodial parent is not required to sign a power of attorney or pay tuition, even if living out of state.
 - 2.2.2. The parent whose address lies within the school's boundaries shall be the school's main contact.
 - 2.2.3. Both parents shall be identified as custodial on the District's Student Information System.
 - 2.2.4. Both parents can make educational decisions, and, so long as no dispute arises between them, both may be considered custodial parents under the provisions of this directive.
 - 2.2.5. If the parent whose address does not lie within the school's boundaries seeks to exert parental rights or make decisions contrary to those made by the other parent, the parent whose address is outside the school's boundaries must first unenroll the student from the school and enroll the student in the school in whose boundaries that parent lives.
- 2.3. In the event of a dispute between divorced parents over the student's enrollment, the applicable court order should be consulted to determine the custodial parent, as defined and more fully described in Paragraph 1.2. In such cases, the student should be enrolled in the school in whose boundaries the custodial parent lives.
3. Student Education Records: Under state and federal law, both the custodial and noncustodial parents are entitled to inspect (or receive a copy of) the education records of their students. A noncustodial parent may be prohibited from accessing their student's education records only if there is a court order specifically prohibiting disclosure. Without such a specific court order, a custodial parent has no authority to prohibit a noncustodial parent's access to their student's education records.
4. Parent Teacher Conferences: A school teacher or counselor may hold parent teacher conferences with both the custodial and noncustodial parents. Separate parent teacher conferences are not legally required, but depending upon the circumstances separate meetings may offer the best setting. Both the custodial and noncustodial parents are to be informed as to the educational progress of their student. However, unless a court order specifically provides otherwise, educational goals and decisions are to be determined only with the custodial parent.
5. Parent-Time/Visitation: Utah law specifically prohibits the exercise of parent-time (visitation) on school property during the school day. UTAH CODE ANN. § 30-3-33(7). Accordingly, school administrators should not permit this to take place. Parents (custodial and noncustodial) should not infringe upon the school day for social visits with their students. School administrators may deny parents access to their students if it is for such purposes. School personnel should never be involved in any way with overseeing or supervising a child parent-time (visitation) exchange between divorced parents. School buildings or grounds (before, during, or after school) shall not be used as a place in which to facilitate parent-time (visitation) rights of the parents or the custody exchange of a student.
6. Letters and Subpoenas: School personnel should not become personally involved in family conflicts and domestic disputes. Parents should be encouraged to resolve their domestic issues outside the school setting. Even if specifically requested by a parent or attorney, school personnel should not voluntarily write letters, sign Affidavits, or otherwise become personally involved in domestic matters that are being handled by the court. Becoming involved in such matters will place the school and its personnel in the middle of the domestic disputes, and will take the school and its personnel out of a neutral position by appearing to support one parent over another. School personnel should focus on the education of the students and not become involved or take sides in domestic disputes. It is important to understand that a written letter or signed Affidavit will generally not be admissible as evidence in court,

and will most likely cause the individual to be subpoenaed later to testify at a deposition or court hearing. In the event a school employee receives a subpoena, that individual should promptly notify his/her principal or supervisor. In addition, it is advisable to consult with the Legal Department and refer to Nebo School District Administrative Directive No. 5.2, *Witness Guidelines*. A subpoena constitutes a court order and must be followed. Failure to comply with a subpoena may cause the individual to be found in contempt of court.

7. Step-Parents: Step-parents do not have any parental rights in and of themselves. Generally, step-parents do not have a right to inspect (or receive copies of) student education records for their step-children. These rights are given under the Family Educational Rights and Privacy Act (FERPA) to natural parents, adoptive parents, and legal guardians. However, in some circumstances a step-parent may have rights under FERPA entitling them access if they are “acting as a parent in the absence of a parent or guardian.” Accordingly, step-parents who are the spouse of the custodial parent and are directly involved in the day-to-day activities of their step-children are entitled to inspect (or receive copies of) student education records. By contrast, step-parents who are the spouse of the noncustodial parent who are not directly involved in the day-to-day activities of their step-children are not entitled to inspect (or receive copies of) student education records. Please note that in the event a step-parent is entitled to having access to student education records, such rights do not extend to anything else, such as consulting with school teachers and personnel about the student, making educational decisions for the student, checking the student out of school early, etc. In the event of a divorce and remarriage of the mother, schools should not change a student’s last name to the last name of the step-father. Without a court order legally changing a student’s name (either by an adoption or court ordered name change), the educational records maintained by the school should reflect the legal name of the student. Because the student may go by a different last name, the school may make a notation or reference in the student’s file and/or on SIS that said student may also be known by the step-father’s last name. Generally, step-parents should not attend parent teacher conferences by themselves. Step-parents may be in attendance at the parent teacher conferences with the natural or adoptive parent. An exception may be made under exigent circumstances with the permission of the custodial parent.
8. School Attendance and Truancy: Under Utah law, the “custodial parent,” a “legal guardian,” or a “person purporting to exercise authority over the minor,” is responsible for attendance and truancy matters concerning their students. In divorce situations, unless a court order specifically provides otherwise, the “custodial parent” is responsible for school attendance and truancy issues.
9. School Work, School Discipline, Activity Participation, Waivers, Etc.: Utah law states that the custodial parent is primarily responsible for matters concerning their student’s school work, school discipline, permission to participate in field trips or extra-curricular activities, waivers of participation in certain activities, etc. However, some of these items may be specifically addressed in a court order. Accordingly, court orders on file with the school should be reviewed in relation to these responsibilities. In the absence of any specific declaration in a court order, the custodial parent is the parent the schools should work with for these types of matters. Utah law provides that the school must “notify the custodial parent and, if requested in writing by a noncustodial parent, the noncustodial parent of the suspension and expulsion of, or denial of admission to, a student.” Utah law further provides that a “parent with legal custody or other legal guardian of a student” may request a waiver of participation for a student’s participation in a portion of the curriculum or in an activity that would require the student to affirm or deny a religious belief or right of conscience, or engage or refrain from engaging in a practice forbidden or required in the exercise of religious right or right of conscience.
10. Newsletters, Flyers, Notices, Etc.: Unless specifically provided otherwise by court order, newsletters, flyers, notices, and other information from the school should be communicated to the custodial parent. The school is not legally required to send such school notices to the noncustodial parent, but may do so under unique circumstances and solely as a courtesy. Often, the custodial parent is required under their own Divorce Decree or other court order to communicate school information concerning their children to the noncustodial parent.
11. Student Illness or Injury: Unless there is a specific court order otherwise, on SIS both the custodial and noncustodial parents should be designated as “Emergency Contacts.” In the event a student becomes

injured or ill at school, Utah law provides that the school shall “notify the custodial parent and, if requested in writing by a noncustodial parent, make reasonable efforts to notify the noncustodial parent of a student who is injured or becomes ill at the school” if the injury or illness requires treatment at a hospital, doctor’s office, or other medical facility not located on the school premises. It is also good practice to notify custodial parents of any injury requiring some type of treatment from school personnel even though the student was not required to leave school premises.

12. Limiting Communication with Student: If school personnel receive any notification or instruction from a parent or attorney that the employee is not to communicate with a particular student about “non-academic” matters without the parent or attorney being present, please notify the principal or supervisor immediately. This is a matter in which the principal or supervisor should inform and involve the Legal Department. Such requests are unreasonable and interfere with the proper operation and supervision of the school and its students. There are several “non-academic” but important and legitimate school-related matters in which school personnel need to communicate with students, such as issues relating to school and student safety, policy compliance and violations, student discipline, etc. In addition, school personnel have a legal responsibility and protocol in cooperating with the Division of Child and Family Services (DCFS) and law enforcement officials relating to suspected child abuse or neglect.
13. Student Early Checkout: Unless the Divorce Decree or other order of the court specifically addresses this situation, it is the practice in Nebo School District to only allow the custodial parent to check out their student early from school. School administrators and staff should not allow a noncustodial parent to check out a student from school unless such early checkout is specifically authorized by the custodial parent. This authorization should be documented and kept on record at the school. In the event that the custodial parent authorizes their spouse (the student’s step-parent) or another adult an ongoing release to check the student out early from school, it is the practice in Nebo School District to simultaneously authorize the noncustodial parent to also check the student out early from school. This authorization should be documented on SIS. This simultaneous authorization applies only to an ongoing release; a one-time or other infrequent authorization given on a case-by-case basis does not simultaneously convey the same right on a noncustodial parent. This early checkout procedure is consistent with the rights and authorities of a custodial parent. Should you have any questions regarding the early checkout of a student, please contact the Legal Department.
14. After School Hours: Requests by custodial parents for school personnel to provide supervision and/or assurances that their students will not be picked up by the noncustodial parent after the school day should be handled very carefully, sensitively, and as clearly as possible. The school should explain to the custodial parent that after the bell rings at the end of the school day the students are no longer under the control and supervision of the school, and the school’s “loco parentis” authority is ended. Not only is it virtually impossible, but the school does not have a legal responsibility for “door to door” service. It is unreasonable to expect the school to assure that all students get to and from school safely, or that all students will arrive or leave school with a particular person. This really is the parents’ responsibility. However, the school still has the duty to provide general supervision of students on the school grounds before and after school while students are arriving at or leaving school by walking, bus, or private vehicles.
15. School Programs: Notification concerning special school functions, programs, plays, etc. should generally be to the custodial parent. However, both custodial and noncustodial parents are welcome to attend any special school functions, programs, plays, etc. that are open to the general public.
16. School Volunteers: In the situation in which a parent or step-parent wishes to volunteer in the classroom, the following concepts should be noted: (a) Schools control all aspects of its volunteers (who, where, when, what, etc.); (b) There is no legal right involved with volunteering, nor does anyone but the school make decisions regarding volunteers; (c) Schools should use good judgment and common sense when utilizing volunteers by being sensitive to the situation and making any necessary adjustments; (d) Volunteers should never be placed in a one-on-one situation with a student; (e) Volunteers may be involved in group learning activities where the classroom teacher can maintain appropriate supervision and control; and (f) Volunteers who have significant unsupervised access to students are required to undergo a criminal background check and an employment reference check (see Nebo School District Policies KB, GBN, and GCD).