

GUIDELINES FOR
SCHOOLS REGARDING THE

Rights

OF NON-CUSTODIAL PARENTS



*Translation of a document produced by the Secretaries General Committee
of the Montérégie and Estrie*

rights
equal
parent
school
with authority

Explanatory note

This document offers practical advice on parental rights and is intended for school administrators. It is based on the rules of law that generally apply in the area of parental rights. However, it is not a legal opinion. It is the responsibility of school administrators to exercise their judgment in the context of each situation. If there is any uncertainty, we recommend that you contact the Secretary General of your school board to discuss the steps that should be taken.

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Non-custodial parents

For the purposes of this document, a non-custodial parent is defined as one **who does not have primary custody of the child** but who generally has visitation rights as well as occasional custody (vacation, week-ends). A non-custodial parent may also be the one who, although sharing custody with his former spouse, does not have physical custody at the particular time the school sends information home or makes a decision relating to the child.

1. Exercise of parental authority

Unless the court has revoked their parental rights, **non-custodial parents retain their parental authority**. As a general rule, they have the same rights within the school system as custodial parents do.

1.1 Decisions about the child

Q Do non-custodial parents have the right to make decisions about their children?

Yes. Fathers and mothers exercise parental authority jointly; they have the same rights with respect to decisions made about their children. The Civil Code states clearly that **exclusive custody awarded to one parent does not relieve the other parent of parental authority** (article 605 Q.C.C.¹). In other words, non-custodial parents retain their right to make decisions about their children in the same manner as do custodial parents.

Obviously, custody of the child will mean that the custodial parent will make a number of decisions regarding the child's daily schedule. However, jurisprudence indicates that both parents, whether or not they have custody, have the same rights when it comes to making major decisions about the student (e.g. the choice of school, programme, medical care, extracurricular activities).

The exact opposite holds true when parental authority is revoked, which means in effect that the rights in terms of parental authority are terminated. The revocation of parental authority occurs only as a result of a decision of the court. Normally, the custodial parent will inform the school that such a decision has been rendered and the school will include a copy in the student's file.

¹ *Québec Civil Code*, R.S.Q. C-1991

Q Does this mean that, for every decision, we are required to obtain the agreement of both parents?

No. The Civil Code provides that **where one parent performs alone any act of authority concerning their child, he or she is presumed to be acting with the consent of the other parent** (Article 603). When one parent makes a request, we may assume that it was formulated with the consent of the other parent. On the other hand, if there is knowledge that one parent is opposed to the decision of the other parent, this fact must be taken into account. In the **event that one parent objects**, it must be presumed that there is no consent. As a result, we must act as if we **do not have parental permission**. If the dispute persists, it will be up to the court to resolve the matter in the best interests of the child (Article 604).

1.2 Participating in an individualized education plan

Q Are we required to invite non-custodial parents to participate in setting up an individualized education plan for their children?

No, due to the presumption that one parent is acting with the consent of the other parent (see previous question). **However, non-custodial parents may be invited** and, in certain cases, their participation may even be desirable.

Article 96.14 of the Education Act indicates that an individualized education plan is established with the participation of the parents. Legally, in this area, the **non-custodial parent has the same rights as the custodial parent**. The non-custodial parent has the right to participate in the development of an individualized education plan and the custodial parent does not have the right to interfere. Obviously, the **conditions** for such participation may be adapted to fit the circumstances that prevail between the former spouses, without adversely affecting their actual participation in developing the plan.

In the absence of a notice to the contrary from the non-custodial parent, the school administration is not required to invite him to participate in the development of an individualized education plan. The school will have to determine the relevance of having one or both parents participate in the development of the individualized education plan, based on the objectives of the plan and on the family situation of the child. The school may choose to invite only one parent, normally the custodial parent since he will be the one to implement the plan's recommendations on a daily basis. From a legal point of view, this is not a breach of the rights of the non-custodial parent given that the parent who performs alone any act of authority concerning his child is presumed to be acting with the consent of the other parent (Article 603, Q.C.C.). However, there are cases where the participation of both parents is desirable in order to achieve the objectives that have been set.

Q Are we required to inform non-custodial parents about the content of their child's individualized education plan?

No, the **school is under no obligation to inform the non-custodial parent** of the content of the plan. However, the parent has **the right to receive a copy of the plan** if he requests one, within the limits of the rules concerning access to personal information and the protection of such. In some cases, it may even be desirable that the non-custodial parent receive this information.

If the non-custodial parent does not make a request to this effect, the merits of whether or not to inform him of the content of the plan will be left to the parent who participated in its development. In addition, since this plan may contain personal information about other individuals (e.g. the child's relationship with the custodial parent, with the spouse of one of the parents, etc.) and since access to this information may be barred, such requests should be directed to the person responsible for access to information at your school board in order that they may be processed in accordance to appropriate legal requirements.

1.3 Custody not exercised by the father or mother

Q Within the framework of the Education Act, under what circumstances can an individual other than the father or mother be considered a child's parent?

With respect to the Education Act, there are two situations in which a person other than the father or mother may be considered as a *child's parent* (Article 13,2° paragraph 1). The first is in the case where parental authority is transferred to another person by **decree** (e.g. foster family) or by **power of attorney**.

The second, more common, situation is the case of an individual who assumes de facto custody of the child without a decree awarding him parental authority or even legal custody of the child. The Education Act states that such a person may be considered as being the parent, insofar as the application of the provisions of the law are concerned, barring objections from the father or mother.

Q How can we be certain that a person is actually the de facto guardian of the child?

Since it is a matter of de facto custody rather than legal custody, legal documentation attesting to custody is not necessary and, in most cases, there will not be any. However, the existence of a document attesting de facto custody would certainly be helpful to clarify matters and facilitate follow-up of the case file.

Occasionally, it is possible to obtain a document from the parents attesting that they have given custody of their child to someone else. If it is not possible to obtain such a document, a sworn declaration by the individual who has de facto custody may prove useful even though it is not required.

2. Contacting and picking up the child at school

Non-custodial parents retain their parental authority, along with all its inherent rights and duties, the most fundamental one being to maintain contact with the child. Additionally, barring special circumstances and within the framework of legal rulings, non-custodial parents will have the same access to their child as custodial parents.

2.1 Contact with the child

Q Can non-custodial parents contact their child at school?

Yes. Non-custodial parents retain their parental authority even if they do not have custody of the child. Of course, any parental contact with a child at school must occur according to the rules determined by the school and which normally define the schedule for parent visits in the school.

However, in the event that the custodial parent has made his objection known with respect to the non-custodial parent contacting the child during school hours, we recommend that you refer to the terms of the judgment concluded between the parties regarding visitation rights. Moreover, if the school administrator has reason to believe that the **safety of the child** is at risk, he must refuse access to the non-custodial parent. The custodial parent should be informed of the situation.

If the parental authority of the non-custodial parent is revoked, he may not exercise any right or authority with respect to the child, including the right to have contact with him/her.

2.2 Picking up the child at school

Q Can non-custodial parents pick up their child at the end of the school day?

Yes. Non-custodial parents retain their parental authority and they do have the right to pick up their child at school, **unless the custodial parent objects on the basis of a court order**, a copy of which should be included in the child's file.

In the event that the parents are in disagreement, it is recommended that the school not try to assume the role of mediator. The best solution is to establish clear guidelines based on the terms of the court order regarding visitation rights.

However, if the school administrator has reason to believe that the **safety of the child** is at risk (undue aggression, diminished capacity, etc), he must refuse to allow the child to leave and must inform the other parent of the situation. This observation holds true for both the custodial and non-custodial parent.

3. Access to information and documents about the child

Another right of parental authority, which is also maintained by the non-custodial parent, is being able to track the personal and academic development of the child. In terms of information, no distinction should be made between the rights of the custodial parent and the non-custodial parent unless the parental authority of the latter has been revoked. However, a number of specific elements must be considered, as explained below.

3.1 Report cards and communication with parents

Q Can non-custodial parents ask that the school provide them with report cards and other parent communications regarding their child?

Yes. Non-custodial parents retain their parental authority and retain the right to be informed of the academic progress of their child. They can **insist on receiving report cards** and other academic reports on their child in the same capacity as the custodial parent. Consequently, the school must comply with the request made by the non-custodial parent and provide him with a copy of the report cards and other communications. However, **in the absence of such a request, the school is not required** to produce these documents for both parents. (Unless otherwise noted, a document given to one parent is presumed to have also been given to the other parent.) However, since the address of the custodial parent is considered to be personal information, it is recommended that the **address of the custodial parent be concealed** on documents sent to the non-custodial parent.

A parent who has sole custody of his or her child may not prevent the school board from providing information such as report cards and other communications about the child to the other parent. In fact the school board is not required to inform the custodial parent of a request made by the non-custodial parent.

3.2 Student files

Q Do non-custodial parents have access to the child's file, e.g. academic record, individualized education plan, confidential file?

Yes. The non-custodial parent has the same right of access to his child's records as the custodial parent, subject to the **protection of personal information** as mentioned earlier.

As part of their duties, school board personnel are required to open a file on every student who attends school. In general, this file includes three different records: academic file, individualized education plan and confidential file. The same principles of access apply to the non-custodial parent as those regarding access to report cards and parent communications. With respect to the **organization** of these files and the **conditions** for accessing them, **each school board may develop its own procedures.**

With respect to **access to the child's confidential file**, it is recommended that you consult with the person responsible for access to information at your school board since some provisions of the *Act respecting Access to Documents held by Public Bodies and the Protection of Personal Information* may be applicable and as a result, access to certain information may be limited.

3.3 Preparing legal files

Q If a parent, whether or not he has custody, asks a member of the staff to write a letter in order to assist him with legal proceedings against the other parent, is there an obligation to do so?

No. We are under no obligation to do so. Our legal obligations are limited to providing documents that already exist and which relate to the progress of the child. Such documents are normally kept in the student's file.

Where the welfare of the child is concerned, staff may deem it pertinent to comply with such a request from the parent. Obviously, staff should proceed with caution so as not to incur negative relations with either parent or open themselves to being subpoenaed in order to clarify allegations. Furthermore, under these circumstances it would probably be advisable to send a copy of the letter or subpoena to the other parent, after having informed the petitioner.

Except where the child's interest is at stake, such a letter should be limited to factual information (number of days absent, homework done or not done, noticeable change in academic performance, etc.) rather than purely subjective observations which could precipitate unnecessary disputes.

Q Can we respond to requests for information from the lawyer of either parent?

Generally, **yes**. A lawyer is mandated by an individual to represent him and his interests. Normally, he would be authorized, explicitly or implicitly, to receive all the personal information his client is entitled to receive. We may send the parent's lawyer all of the personal information the parent has the right to receive, but only that information (see the section on parental access to the student's file). The lawyer's request must, of course, be made in writing.

The lawyer does not have more rights than the parent whom he represents, unless there is a subpoena to appear in court (see below).

Q What should we do if we receive a subpoena regarding a legal proceeding?

Cooperate. A subpoena obliges a staff member to appear in court as a witness in a case. Normally, this person would be asked to bring certain documents related to the academic progress of the child.

Often, the date of the hearing is imminent and the lawyer wants to make sure that he has in his possession all of the pertinent documents he needs to prepare his case. Unless there is a particular desire to go to court, we suggest that you contact the lawyer who issued the subpoena and find out whether fast-tracking the documents to him would nullify the summons to appear (remember that the documents that may be given to the lawyer are only those to which his client has access). In most cases, the lawyer will be satisfied with receiving the documents. If, following this procedure, the subpoena continues to be in effect, the staff member concerned has no other choice but to appear in court on the date and time indicated, with the documents requested in hand.

4. Debt collection

Q Is the non-custodial parent responsible to pay amounts owing to the school board regarding goods and services provided to his child?

Yes. The father and mother are jointly and severally responsible for the monies owing to the school board on behalf of their child. The school board is not required to administer the decree concluded between the two with regard to child support payments since the decree is not enforceable against a third party. It will be the responsibility of the mother or father, as the case may be, to claim back the money he or she had to pay and which should have been paid by the other parent in accordance with their decree or agreement.

If doubts remain about the procedure to follow...

Sometimes it is impossible to see clearly the procedures that should be followed in dealings with parental rights issues, particularly due to the emotional strain that often exists between parents and their former spouses. If doubts persist, it is recommended that you contact the Secretary General or the Director General of your school board to discuss the action that should be taken.

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