

Mom and Dad are Fighting: When Child Custody Disputes Come to School

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Why is this a problem?

- People have expectations that are not realistic, based on their emotional needs
- They want to use the school to hurt or annoy or punish the other parent or his or her new spouse or partner
- They may want to come to the board to complain about this (NO!)
- School administrators have zero professional training in this area, and it is very stressful and time consuming to have upset people shouting at them

Situation

- Mom and Dad are divorced. Dad has visitation.
- Your policy 4.15 says that a parent who has visitation can eat lunch with the student and volunteer in the classroom.
- Mom calls and demands that Dad not be allowed to have lunch with his child.
- Or, mom calls and says that the school must prevent Dad from picking up the child after school unless it is a day that “belongs” to dad. Also? According to mom, the school must prevent Step-Mom from picking up the child.

What to do?

The Power of a Court Order

- A court order has power over the **parties (participants)** to a lawsuit, such as a divorce or custody decree.
- Your district is not a participant to any divorce or custody proceeding.
- When a court order is violated, the remedy is to go back to court. Not yell at the principal.
- A judge can hold someone who violates a court order in “contempt of court” and can even jail someone for this
- It is **not** the school district’s job or problem to enforce court orders.

Divorce Decrees and School Districts

- Not your job to police and enforce the divorce and custody decrees of parents.
- They don't come to you to get divorced, or to complain about unpaid child support, so they shouldn't come to you to enforce or control visitation.

Interesting vs. Important

What about out of state custody paperwork?

- There is a process to convert out of state custody paperwork to Arkansas-issued custody paperwork.
- You tell anyone with out of state paperwork to go do this, and then you'll look at it.

Divorces are easy

- You only look at the degree to determine if there is visitation to see if policy 4.15 is triggered
- School records and information about students may be shared with “parents.”
 - This includes current step-parents
 - This includes people who are acting like parents, like granny who is raising her grandchild
 - Mom has no power to cut Dad or StepMom out of the school records loop
 - If there is a SERIOUS problem (like stalking) it will be addressed in a court order with the school district’s name in it

Picking up Students from School

- Your interest is that a child's parent, or a person approved by a parent pick up the child (typically, elementary only is this an issue)
- Either divorced parent can call and ask that another person be allowed to pick up a child. Parents do this all the time, grandma picks up the kid when mom calls to say it is ok.
- It is not the job or problem of the school district to determine if it is the "right day" for a child to be picked up by the "right parent."

Non-Marital Children

Mom and Dad have never been married.

If there is legal paternity established judicially, you've never seen those documents. Looks like these people have never been to court.

Dad's name is on the birth certificate.

What can Dad do at school?

Non-marital Dad, no document

- With lots of ID to convince you that he's the guy on the birth certificate, he can have access to school records.
- (Be very leery of trying to establish this long distance)
- Mom is in charge of everything else, unless he's got court documents giving him visitation, in which case, apply policy 4.15.
- Specifically: he doesn't see the child at school, pick up the child after school, check the child out of school without mom's permission.

Why?

- A mom who has never been married to her child's father is in a superior legal position
- It is harder for a dad to get custody from a mom, if they have never been married. He has to prove that she is unfit. In a divorce, the legal presumption is that both are fit parents.
- Never-married situations are much less likely to involve joint custody

SO: if your child's family plans get ahead of his or her wedding plans

- Tell your DAUGHTER to only marry the guy if she is 100% sure this is just a timing issue
- Tell your SON to do everything in his power to marry his pregnant girlfriend, regardless of whether he thinks it will last or not
- Child support is exactly the same regardless of whether the child's parents have ever been married to each other

Non-Marital Parents with shared custody and visitation (they have been to court)

- Treat like divorced parents: their court paperwork is not your job or your problem to enforce or monitor

Situation: Grandparents

- Mom and Dad are divorced. Dad's mother wants to come to school and have lunch with her granddaughter. Mom throws a fit.

Grandparent's Rights

- There are situations where Arkansas courts will create legal rights for grandparents that override the wishes of the parent
- Typically, this involves the grandparents' whose child has died that forces their former daughter in law to let them see their grandkids
- But unless such documents specifically discuss school, there is no implied right to see the child at school.
- Dad can bring his mom (or another person) to school if you allow other lunch visitors to do this, but it is unlikely your policy lets parents approve non-parents to have lunch with students.

What about informal arrangements?

- Child custody with no paperwork. “Aunty Mary” is raising the child.
- Schools must roll with this. You can’t demand court documents or that people go get court documents before you enroll a child
- Treat the person who is acting like the parent like the parent for everything at school
- Everything is great until the biological parent rolls into town and comes to school

Situation

- You know that Mom is a drug user who has done jail time. She left her kids with her parents, and left town five years ago. There is no legal paperwork giving custody to the grandparents. You have dealt with no one else for five years.
- Mom shows up on Tuesday, and wants to check the kids out. They haven't seen her in years.
- What do you do?

My suggestion

- Call the grandparents, and tell them to come to school, RIGHT NOW.
- Call the law. If you want to be REALLY HELPFUL, give them the make, model and license plate number of the car mom came in.
- When the law gets there, turn an office over to them, and ask that you be informed of what THEY decided to do.
- There are some pretty good odds mom will vanish when you tell her you called the law.
- Privately, later, you can tell the grandparents they should go for legal custody.

Why this works

- Lots of people have outstanding warrants, because they couldn't or didn't pay a fine or a court cost or didn't show up for a court date.
- If police discover someone they pull over or interact with has an outstanding warrant, they arrest that person. If they are driving, they are arrested and the car is impounded. It is like being raptured. They just vanish.
- Since you do not live your life like that, it doesn't occur to you that lots of people have excellent reasons to want to avoid the police.

Situation

- Dad tells you that he is trying to get custody of his children from their mother.
- Privately, you are cheering on the inside. Privately, you think that the kids would be better off.
- Dad wants your school counselor to voluntarily testify on his behalf in court, and talk to his lawyer next week about her testimony. Dad wants you to write down all the crazy stunts Mom has pulled over the years.

What should the school do?

Schools should be parent-neutral

- Don't put anything in writing, on purpose. Ever. School records can be given to any parent, however.
- Don't volunteer to testify. Ever.
- School employees do not have to talk to parent's lawyers and should not.
- If a school employee is subpoenaed, that is like getting a note from God: they have no choice.

When in doubt . . .

- Tell your elementary and middle school principals to call me

Questions? And Housekeeping

- Lawyers, CLE forms to me!
- Everyone, complete your evaluation.
- Leave your name badge with an ASBA employee, to get training credit. (Lawyers who are also board members, do all of the above.)
- Thanks!