



# **CHILD CUSTODY**

for Educators and  
School Mental Health Professionals

**A Publication of the  
Bergen County Bar Foundation**

*Sponsored by the New Jersey State Bar Foundation*

# Acknowledgments

This publication was prepared by the staff and volunteers of the Bergen County Bar Foundation and is cosponsored with the New Jersey State Bar Foundation. The Bergen County Bar Foundation is a non-profit organization incorporated in 1991 to create, support and promote programs that raise awareness of the legal system and support the legal rights of individual citizens.

This pamphlet is made possible by funding from the IOLTA Fund of the Bar of New Jersey. Special thanks to Lisa Estrin, MSW, Susan Garfield, MSW, Dennis A. Maycher, Esq., and Marcia K. Werner, Esq. for their help in preparing this pamphlet. Also thanks to Catherine Riordan, Esq., Abigail Stolfe, Esq. and David Rubin, Esq. for reviewing the pamphlet.

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# Introduction

With the break up of marriages, same-sex, and non-marital heterosexual relationships soaring, more and more children are experiencing the legal and emotional consequences of being “split.” Children of divorce or separation may bring their issues to school and their parents sometimes use the school as a “battleground” for their not-so-private war.

What can educators and mental health professionals do to help the family? What do educators and mental health professionals need to know to protect and support their students yet remain within the law? This pamphlet will explore these issues.

*It is important to note that this pamphlet is being produced as a public education service to help explain New Jersey law. It does not constitute legal advice, which can only be given by an attorney.*

## PART I

### Legal Background of Child Custody

When the parents of a minor child are divorced, living separately, or about to live separately, the Superior Court of New Jersey has the power to make judgments concerning the care, custody, education and maintenance of the child. Until a final judgment is made, the Court is directed to determine temporary custody based on the best interests of the child with due regard to the caretaking arrangement that previously existed.

It is the public policy of the State of New Jersey to assure that minor children have frequent and continuing contact with both parents and to encourage parents to share the rights and responsibilities of child rearing.

Parent is defined as a natural parent or parent by previous adoption unless “otherwise described by context.” That means that the court can find that the child has a “psychological” parent who is entitled to custody or parenting time. One example would be in the case of a same-sex or step-parenting relationship or when the court has appointed a “kinship legal guardian.”

While parents may and often do, make their own decision as to custody, when the court is forced to make a decision it is authorized to order any custody arrangement, which it determines to be in the best interests of the child. Most often those arrangements fall into one of the following categories:

- **Joint Legal Custody** to both parents with primary residential custody with one parent. This means that the child resides predominantly with one parent but both parents have the right to participate in making major decisions concerning the child’s health, education and general welfare.
- **Joint Legal and Physical Custody**—an arrangement whereby the

child spends roughly an equal amount of time with each parent.

- **Sole Custody**—an arrangement whereby the child lives most of the time with one parent who also makes all major decisions concerning the child’s health, education, religion, etc.

In practice, parents are generally awarded joint legal custody of the children. An exception would be situations where one parent may be incarcerated, adjudicated abusive or otherwise deemed unfit to participate in decision-making concerning the child.

Parenting time, if the parties cannot agree, will be based upon the best interests of the child. It runs the gamut from frequent weekend and mid-week overnight visits to supervised visitation where the child’s best interests mandate that he or she not be left alone with the visiting parent.

In making an award of custody, the court is directed to consider, among other factors, the parents’ ability to cooperate in matters relating to the child; any history of unwillingness to allow parenting time to the other party not based on substantiated abuse; the interaction and relationship of the child with his or her parents and siblings; the history of domestic violence, if any [there is a rebuttable presumption that a parent against whom a Final Restraining Order has been entered should not have residential custody]; the preference of the child when of sufficient age and capacity to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child’s education; the geographical proximity of the parents’ homes; the parents’ employment responsibilities; the age and number of the children and the extent and quality of the time spent with the child prior to or subsequent to the separation.

To aid it in reaching a decision, the court may appoint a guardian ad litem, or attorney for the child. This is generally done only in unusual cases. For example, a guardian ad litem was appointed for the child in the *Baby M* case, which involved a surrogate mother who would not voluntarily relinquish the child.

The parents or the court often enlist the help of mental health

experts when custody or parenting time is in issue. Those experts will interview the parties and children and will reach out to ancillary sources, such as school personnel and therapists for additional information to aid them in formulating an opinion as to the best interests of the child. The parents are asked to consent, as part of the evaluation, to waive their and their child's right to privacy in this regard. The court relies on the opinion(s) of the experts when reaching a determination as to custody and parenting time.

Once a decision has been made, on an interim or final basis, as to custody and parenting time that decision will be embodied in a court order or property settlement agreement incorporated into a Final Judgment of Divorce. In some cases, those orders are very specific as to when the child is with each parent, for example, "Wednesday from 6 p.m. to 9 p.m. and Friday from 3 p.m. to Sunday at 8 p.m." In other instances they are not. For example, "every other weekend from Friday evening through Monday morning and one weeknight dinner." Still other agreements will simply provide for "reasonable and regular parenting time as the parents may agree." Because of these variations, the school is well advised to inquire and secure in writing a statement as to who is authorized to remove a child from school.

Custody and parenting time are always reviewable by the court, or the parties may agree to a change. Therefore, the status quo may change from time to time.

By statute, every parent, to the extent permitted by federal or state law, is permitted access to records pertaining to his or her unemancipated child, including, but not limited to medical, dental, insurance, child care and educational records, whether or not the child resides with the parent, unless that access is found by the court to be not in the best interests of the child or the access is found by the court to be sought for the purpose of causing detriment to the other parent. However, the address of either parent is not to appear on any records or information released.

Divorced or separated parents may ask that duplicate copies of report cards and other mailings be forwarded to them at separate addresses. While this presents an administrative challenge, and

additional cost, it is a great boon to parents who might otherwise not see the paperwork. It is not wise to assume that estranged parents will voluntarily share this information.

When parents are unable to agree as to parenting time or day-to-day matters concerning their child, the court may appoint a therapeutic monitor to work with the family. The court also has authority to appoint a parenting coordinator who will assist the parties in resolving a dispute between the parents, for example, whether the child should participate in a particular extracurricular activity, subject to either party's right to submit the issue to the court. The order appointing a parenting coordinator will usually provide that the parenting coordinator shall have access to school personnel and such other third party sources as are necessary to assist the parties.

## **PART II**

### **Understanding the Needs of Children During the Divorce Process**

*Information in this section was provided by the National Education Association Standing Committee on Instruction and Professional Development ([www.pobct.org/divorce.html](http://www.pobct.org/divorce.html)) and Rainbows New Jersey ([www.rainbowsnj.org](http://www.rainbowsnj.org)), a nonprofit organization that offers free, confidential support groups for children and adults coping with divorce.*

#### **The emotional effect divorce has on children and families**

Divorce is a time of adjustment for all children. If there has been a lot of parental conflict in the home, the divorce can come as a relief to children who are no longer living with ongoing tension and arguing. For other children, it can be devastating. Most importantly, it is how the adults handle the divorce that indicates how well the children will adjust. Divorce is a time of uncertainty and confusion for children. Children need to be reassured that they will be kept safe and that their parents will always be their caregivers even when they do not do it together. Parenting time schedules should be consistent for children to understand and predict what is happening to them.

#### **Impact of divorce on children at different ages**

The most difficult time for divorce is toddlerhood and early adolescence. While toddlers have an understanding of their environment, they do not have the words yet to describe their feelings. Therefore, toddlers will throw tantrums, become aggressive, etc. as a way of expressing themselves. Latency age children (ages 5–11) can understand the divorce better and can articulate their concerns. They are still dependent on their parents, but also occupied with school, friends and activities that their parents may or may not participate in.

Early adolescence is a time for children to develop a separate self from the family. A child this age will develop opinions and tastes different from their parents. Peer relationships become of utmost importance. Divorce at this time pulls a child back into the family when the developmental task is to separate. It is also a very tenuous time in a child's self-esteem. If the parents are in a conflictual divorce, it can damage an early adolescent.

### **How to recognize symptoms in the classroom**

It is very important that the child's teacher be aware that the child's family is changing. It is equally important that the parents do not drag the teacher into the middle of the parental conflict. Most importantly, the teacher needs to understand that a child's behavior is indicative of his or her emotional wellbeing. If a child has difficulty concentrating or focusing, is fidgety, aggressive, or oppositional, it is not necessarily an indication of a behavioral problem, but can be a problem with adjustment or depression. Teachers need to be cognizant of the changes in the family and be empathetic with the child while being consistent with what kind of behavior is tolerated in school. Basically, behavior is the biggest indicator of how a child is doing. If the teacher sees behavior that is problematic, the teacher should get the school social worker involved.

### **What teacher, counselors and school mental health professionals can do**

The adults in a child's life at school can be very influential during this time. They can recognize that the behavior is due to the break up of the family and major schedule changes in a child's life. They should let the child know that they are aware of how difficult this time is. These adults can provide support and empathy to a child, which in turn will help with the behavior. Most schools have a group for children of divorce and the child can be referred to this group.

### **Supporting children of divorce in the classroom**

Following are some simple steps teachers can take to help ease the

single-parent child's emotional burden and make him or her feel more comfortable and more accepted in school.

1. Identify the single-parent children, but do so in a quiet, private manner. It is important for legal and emotional reasons that the school is aware of each student's family unit. Update emergency records annually requesting current information, (i.e., address, home phone, work phone, etc.) for both parents.
2. Be aware of your own attitude and feelings. Children are acutely perceptive and sensitive, especially at this time in their lives. Avoid negative biases or judgments and terms such as "broken home."
3. Teach feeling words in the classroom. It helps the children describe their own feelings and is of benefit to all children.
4. Initiate class discussion. This allows children to understand how others feel about divorce in the family. It also helps children to learn compassion. Discuss various meanings of family: newlyweds, empty-nesters, nuclear families, single-parent and step-families.
5. Be aware of gift giving and gift-making. The child should be allowed to decide for whom the gift is intended. You could say that the gift is for an important adult in their life. Avoid Mother's Day gifts for Mother only, etc.
6. Be sensitive to school events. Avoid mother/son dances, father/daughter outings, etc. Children without that particular parent present in their lives feel the loss acutely at this time. It is easy enough to have parent/child events.
7. Stay out of custody battles. Unless you have something significant to contribute, it is not your place and there is no need to be intimidated.
8. Schedule parent-teacher conferences at various times. This allows the working parent to attend. Be careful not to remind the children of the conference by saying, "be sure to bring 'both' of your parents tonight." If one is not currently available or the parents are hostile to each other, the child will remain silent about

the conference altogether.

9. Have books on the subject of divorce available in the library. If children are apprehensive about talking to anyone, often they will feel less threatened by reading about divorce or death. At least, they will have the opportunity to realize they are not alone in their feelings.
10. Be supportive of the parent's situation. Encouragement, understanding and affirmation are most needed at this time. Have books available for the parent to read and have a list of community social service agencies and support systems.
11. Don't blame all problems on living in a single-parent family. The crisis time is normally 18 months.
12. Be sensitive in communications and letters going home. Avoid "Dear Parents." "Dear Parent/Guardian" is appropriate. Never assume the last names are the same. Never assume that there is a Mr. and Mrs. at home because no one has informed you otherwise.
13. Understand the financial difficulties. By working together on finances, a mutually agreeable payment schedule for tuition and other fees should be worked out.
14. Keep communications open between you and the parent. If you notice academic or behavioral changes, keep a record. Send progress reports when necessary, along with notes of praise. Use the child's progress as a vehicle to open dialogue.
15. Provide opportunities to talk with the child alone. The child desperately needs a significant adult to listen to him or her. Affirm the child's statements; be empathetic; be understanding; assist the child in verbalizing by using feeling words; continually remind the child that you care and if he or she wants to talk, you will be there to listen.
16. Don't make light of the situation—validate the child's feelings. Avoid statements like: "It isn't that bad"; "It will get better"; or "Time heals all wounds." The child is living in the present and needs to know how to cope today.
17. Don't pry or intrude into family privacy. There is a difference

between asking the child how he is doing and what is going on in the family, or with particular members of that family.

18. Don't give advice or suggestions. Usually there isn't any to give; the child just needs you to listen.
19. Don't bring up sensitive issues with the child in front of peers or other adults.
20. Be careful not to compromise the child's confidentiality. At this time it may be difficult for the child to trust adults again.

### **How to help parents during this time**

While it is difficult to deal with two parents separately, the school needs to do so. Hopefully, the teacher can have one conference with both parents, but if need be, two conferences should be arranged. Teachers should set limits for the parents to discuss only the children and their adjustment and not the parental conflict. School personnel can also reassure parents that everyone is going through an adjustment period. If a teacher knows that one parent will be doing a project with the child, then communicate with that parent about that project.

### **Suggestions for cooperative parenting techniques that professionals can communicate to parents**

School professionals can suggest parents be child focused. It is very difficult for a parent when the other parent has not been involved in the child's education and since the separation, now wants to be involved. However, it can only help the child to have both parents involved. The professionals can recommend to the parents not to use the children as messengers, to make appointments with each other to speak about the children, teach the parents to speak only about one issue at a time, not use language or tone of voice that will push the other's hot buttons, and not accuse the other parent, but say what he or she would like to happen. These are simple suggestions that work when followed.

### **Community resources for children and parents**

There are agencies throughout Bergen County that work with

children and families. There are groups for children of divorce in most school districts. In addition, the court has referrals to private mental health professionals who specialize in divorce.

**PART III**

## The Roles Educators and Schools Play in Understanding and Enforcing Custody/Parenting Time Agreements

### **The need for a school district and educators to understand New Jersey Laws concerning custody and parenting time**

In understanding the issue of a school district's duty in relation to custody and parenting time agreements, an important pre-requisite to consider is notice. While strictly speaking New Jersey statutes and administrative code are silent on this issue, Administrative Courts have compared this to the residency requirements found in **N.J.A.C. 6A:22-3.1, et al.** See *F.C. v. Rockaway Township Board of Education*, OAL Dkt. No. EDS 11128-04 (January 12, 2005) 2005 WL 327290 (N.J. Admin.). In order for a student's domicile to be determined, the school must be provided notice in the form of a court order or written agreement, denoting which parent has primary physical custody. See **N.J.A.C. 6A:22-3.1(a)(1)(i)**. Similarly, a school district will not have a duty to enforce a custody agreement unless it is provided a judgment of divorce and/or duly executed settlement agreement. However, once notice is provided, a school district must be fully familiar with not only the law in this area but also the specific provisions within the four-corners of the decree of divorce or settlement agreement. See generally *Somerville Board of Education v. Manville Board of Education*, 167 N.J. 55 (2001); *Roxbury Township Board of Education v. West Milford Board of Education*, 283 N.J. Super. 505 (App. Div. 1995); *F.C. v. Rockaway Township Board of Education*, OAL Dkt. No. EDS 11128-04 (January 12, 2005) 2005 WL 327290 (N.J. Admin.); L.T. ex rel. *C.T. v. Denville Township Board of Education*, OAL Dkt. No. EDS 5899-03 (Oct. 27, 2004), 2004

**WL 2623606 (N.J. Admin.); *K.W. by C.W. v. Sparta Board of Education*, 96 N.J.A.R. (EDS) 286, 1996 WL 776401 (N.J. Adm.).**

### **The need for each school district to develop a legally sound comprehensive plan for responding to situations arising from custody orders and potential conflict**

Although school districts are not mandated to develop a plan for responding to such situations, it should create a method for mediating the parties in order to come to a mutual agreement. If the parties cannot come to an agreement and the divorce decree or duly executed settlement agreement is ambiguous on its face, the school board attorney should be contacted in order to obtain a court order clarifying the obligations and rights of the parties.

### **The need for accurate and easy to access record keeping**

The school district's responsibility to establish an accessible record keeping system in this circumstance is not different than its general duty to perform this task under **N.J.S.A. 18A:36-19**. The school district has a mandatory and permissive duty to create and maintain pupil records to which the parent or guardian will be granted reasonable access. See generally **20 U.S.C. § 1232(g); N.J.A.C. 6:3-6.1, et. seq.; N.J.S.A. 18A:36-19**. Included in this record will be any decree of divorce or settlement agreement of which the school is notified. The right of a non-custodial parent to access these records is discussed below.

### **How to determine which parent is entitled to “parental rights” in the school**

When custody of a child is split, it is sound policy to follow the specific terms of a divorce decree or settlement agreement in ascertaining which parent has primary parental rights. “[A] school district is entitled to rely on the order of the Family Court when fulfilling its education responsibilities to the child.” ***F.C. v. Rockaway Township Board of Education*, OAL Dkt. No. EDS 11128-04**

(January 12, 2005) 2005 WL 327290 (N.J. Admin.) There are times when a divorce decree will provide a parent with absolute authority over educational decisions, which the school district must follow despite objections from the other parent. See *L.T. ex rel. C.T. v. Denville Township Board of Education*, OAL Dkt. No. EDS 5899-03 (Oct. 27, 2004). Additionally, where a provision on educational decisions is omitted from a divorce judgment, the school district must follow the wishes of a parent who has sole legal and physical custody of a child. See *K.W. by C.W. v. Sparta Board of Education*, 96 N.J.A.R. (EDS) 286, 1996 WL 776401 (N.J. Admin.). There is a strong preference for the custodial parent to make major educational decisions even in situations where there is joint legal custody. See *Id.* However, this preference cannot overcome a specific term in a divorce decree that calls for joint decision-making on educational issues. In this eventuality both parents will have parental rights. See *F.C. v. Rockaway Township Board of Education*, OAK Dkt. No. EDS 11128-04 (January 12, 2005) 2005 WL 327290 (N.J. Admin.).

### **How should the school respond to parental conflict regarding education decisions?**

As stated above, there is a strong preference for the custodial parent to make major decisions regarding education. Therefore, if a divorce decree, court order, or, if none, a duly executed settlement agreement gives one parent educational rights or if there is an omission on educational rights, the school district should follow the wishes of the primary custodial parent. However, if the divorce decree, or order, requires the decision of both parents on educational issues, then it is the obligation of the school district to maintain the current status of any child unless both parents come to a mutual agreement. See *F.F.C. v. Rockaway Township Board of Education*, OAL Dkt. No. EDS 11128-04 (January 12, 2005) 2005 WL 327290 (N.J. Admin.). When it is unclear, the school attorney should be consulted to get a consensus of all parties and, if none can be obtained, a court order should be obtained to clarify the issue.

### **Which parent has the right to direct access to the child?**

Both the custodial parent and non-custodial parent should be granted direct access to the children; however, this rule should be construed based on the specific facts of the situation. Parental custody can be divided between parents based on legal custody, physical custody, or one parent could have sole custody with a non-custodial parent receiving appropriate parenting time. See **N.J.S.A 9:2-4**. This issue should be addressed in a divorce decree or a duly executed settlement agreement. The “Legislature [found]... that it is in the public policy of this state to assure minor children of frequent and continuing contact with both [parents.]” **N.J.S.A. 9:2-4**. A parent who is provided visitation rights with a child should be allowed direct access to his or her child regardless of whether he or she is the custodial parent, unless the parent has been denied visitation rights, has been adjudged by clear and convincing evidence to be unfit and more likely than not to cause physical or emotional harm to the child. See **Barron v. Barron 184 N.J. Super. 297 (Ch. Div. 1982)**. Additionally, a court decree of visitation rights signifies that there is no risk that the parent will flee with the child. See **In the Matter of Baby M, 225 N.J. Super. 267 (Ch. Div. 1988)**. Therefore, before providing direct access to a non-custodial parent of a child, a school district should require that the divorce decree or duly executed child custody agreement be presented to ensure the parent has been provided visitation rights.

### **How should the school respond if there is a doubt as to whether a student should be released to a non-custodial parent?**

The situation of deciding whether a student should be released to a non-custodial parent can be addressed by looking at **N.J.A.C. 10:122-6.5**. Although this provision deals specifically with childcare centers, it is helpful in interpreting the instant situation. The code here provides that the childcare center must be given a court order if a non-custodial parent has been denied access to the child or only granted limited custody. **N.J.A.C. 10:122-6.5(a)(2)**. Here, the court order will be a divorce decree. The situation is analogous in the sense that a

non-custodial parent who has no access or limited access to a child cannot be given custody by the school. The child can only be released to a non-custodial parent if permission is granted by either the court or by the custodial parent. See **N.J.A.C. 6A14-1.3**. However, in the event of an emergency where the custodial parent cannot be reached, the non-custodial parent can be given custody if he is listed as an emergency contact. See ***M./M.A. Venice Park School-Center for Early Childhood Education Program***, OAL Dkt. No. **DYF 9820-91 (January 16, 1992) 1992 WL 293273 (N.J. Admin.)**. Also, it would be wise to check with the school district if it has a specific school policy issued by the Board of Education.

**To what limits should the schools, administrators and teachers go to guarantee and enforce custody decisions?**

The district has an absolute duty to abide by custody decisions. State matrimonial law is controlling in this situation, and courts and administrative law judges will not overrule a portion of a divorce decree if challenged. See ***F.C. v. Rockaway Township Board of Education***, OAL Dkt. No. **EDS 11128-04 (January 12, 2005) 2005 WL 327290 (N.J. Admin.)**. The decree will be enforced even if it is determined by the court that it is not in the best interests of the child. See **Id.** Therefore, a school district must take special care to conform any decision it makes in regard to a student whose parents are divorced with the settlement agreement or judgment of divorce issued by the court.

# About the Bergen County Bar Foundation

A non-profit organization incorporated in 1991, the Bergen County Bar Foundation inspires members of the legal profession to make a difference and reaches into the community by creating, supporting, and promoting programs that raise awareness of the legal system and support the legal rights of individual citizens. The BCBF strives to bring legal education opportunities closer to the citizens of Bergen County by having prominent Bergen County attorneys teach courses, at no charge, to the public in its Community Law Series. In addition, BCBF-produced shows on topics such as domestic violence, elder law, criminal law, municipal court and family law appear on public access television channels.

Each year the BCBF also supports the Symposium for Municipal Development Provider, where it offers law-related workshops for educators and private citizens in the modern public meeting rooms of its headquarters building, The George W. Newman Law Building. In honor of Law Day, the BCBF sponsors a Law Day Essay Contest that encourages students to write winning compositions on patriotic themes. BCBF also underwrites costs for the live television broadcast of the Bergen County Bar's Mock Trial Competition and, in recent years, has awarded many scholarships to meet the financial needs of Bergen County's best and brightest law school students.

# About the New Jersey State Bar Foundation

The New Jersey State Bar Foundation, founded in 1958, is the educational and philanthropic arm of the New Jersey State Bar Association. The Foundation is committed to providing free legal education programming for the public. Programs provided by the Foundation include seminars on such topics as wills, divorce, taxes, retirement planning, disability law and health issues; mock trial programs for students in grades K to 12; training sessions for teachers on the topics of conflict resolution, peer mediation and teasing and bullying prevention. In addition, the Foundation produces a legal newspaper for kids, *The Legal Eagle* and a tolerance and diversity newsletter, titled *Respect*. Both are published three times a year. The Foundation also offers many publications including *Law Points for Senior Citizens (Second Edition)*, *Consumer's Guide to New Jersey Law*, *Legal Consequences of Substance Abuse, AIDS and the Law in New Jersey (Second Edition)*, *Disability Law: A Legal Primer (Fifth Edition)*, *Domestic Violence: The Law and You*, *Students' Rights Handbook*, cosponsored with the ACLU-NJ, and *Residential Construction and Renovation: A Legal Guide for New Jersey Homeowners (Second Edition)*. Some publications are available in Spanish and all are available in alternative formats for the visually impaired. For more information or copies of program materials, visit the New Jersey State Bar Foundation online at [www.njsbf.org](http://www.njsbf.org) or call 1-800 FREE LAW.

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