

Answers to FAQs Regarding Students with Divorced or Divorcing Parents

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ICSA publishes this guidance as part of its continuing effort to provide assistance to school leaders. The responses to the FAQs represent the combined thinking of committee members. Potential questions may arise that are not addressed in this guidance. **This guidance is published for informational purposes only, and is not a substitute for legal advice. For legal advice or a legal opinion on a specific question, you should consult a lawyer.**

1. What is a *parenting plan* under the Ill. Marriage and Dissolution of Marriage Act (IMDMA)?

The IMDMA requires that divorcing parents with minor children file a parenting plan with the court. At a minimum, the parenting plan must include, among other elements:

- An allocation of significant decision-making responsibilities,
- Provisions for the child's living arrangements and for each parent's parenting time,
- Each parent's right of access to medical, dental, and psychological records (subject to the Mental Health and Developmental Disabilities Confidentiality Act), child care records, and school and extracurricular records, reports, and schedules, unless expressly denied by a court order or under Section 602.11 of the IMDMA (which states if the parent is prohibited by an order of protection under the Illinois Domestic Violence Act of 1986 or Code of Criminal Procedure of 1963),
- A designation of the parent who will be denominated as the parent with the majority of parenting time for purposes of Section 606.10 of the IMDMA (which states that for purposes of Section 10-20.12b of the School Code only, the parent with the majority of parenting time is considered to have legal custody),
- The child's residential address for school enrollment purposes only, and
- Transportation arrangements between the parents.²

If divorcing parents do not file a parenting plan with the court, then the court will allocate parental responsibilities.³

2. Can the school obtain a copy of the parenting plan or court order allocating parental responsibilities?

A school does not have a statutory right to be provided with a copy of the parenting plan or court order, but a school can and should ask the parent(s) for a copy of the parenting plan or court order allocating parental responsibilities. Having a copy of the parenting plan or court order will allow the school to more efficiently partner with parents regarding the student's education and manage the logistics of residency, transportation services, records access, and whom to contact for decision-making.

In practice, some districts have implemented procedures to automatically ask for copies of a parenting plan or court order allocating parental responsibilities. If a district is not provided with the parenting plan or court order, it is accessible through the Clerk of Court in the county where the divorce occurred, and the board attorney can assist with obtaining a copy.

3. If a student's divorced/divorcing parents do not have a parenting plan or court order allocating parental responsibilities, how does the school determine where the student resides for school residency purposes?

Without a parenting plan or other court order identifying which parent has been allocated the majority of parenting time, schools will need to gather and review other information about the student's time with the parents to make a residency determination.

The School Code's general residency provision provides that "the residence of the person who has legal custody of a pupil is deemed to be the residence of the pupil."⁴ It further defines *legal custody* to mean one of the following:

- (i) Custody exercised by a natural or adoptive parent with whom the pupil resides.
- (ii) Custody granted by order of a court of competent jurisdiction to a person with whom the pupil resides for reasons other than to have access to the educational programs of the district.
- (iii) Custody exercised under a statutory short-term guardianship, provided that within 60 days of the pupil's enrollment a court order is entered that establishes a permanent guardianship and grants custody to a person with whom the pupil resides for reasons other than to have access to the educational programs of the district.
- (iv) Custody exercised by an adult caretaker relative who is receiving aid under the Illinois Public Aid Code for the pupil who resides with that adult caretaker relative for purposes other than to have access to the educational programs of the district.
- (v) Custody exercised by an adult who demonstrates that, in fact, he or she has assumed and exercises legal responsibility for the pupil and provides the pupil with a regular fixed night-time abode for purposes other than to have access to the educational programs of the district.⁵

Divorced or divorcing parents' custody of their children typically fall under the first or second definition of *legal custody*. Notably, these definitions fail to address which parent has legal custody for residency purposes where a student lives with both parents because his or her divorced or divorcing parents have or are seeking joint custody. However, the IMDMA states that "for purposes of Section 10-20.12b of the School Code only, the parent with the majority of parenting time is considered to have legal custody."⁶ As such, the school district needs to determine which parent has the majority of parenting time.

The School Code's general residency provisions do not apply to children with disabilities, as defined under the federal Individuals with Disabilities Education Act and Illinois special education rules. Instead Article 14 of the School Code, *Children with Disabilities*, provides different requirements for determining the residency of special education students⁷ and states, in pertinent part, that the resident district is the school district in which the parent of the student resides when "the parent has legal guardianship of the student and resides within Illinois."⁸ According to this provision, the residence of a special education student is based on the parent's *legal guardianship*, not legal custody.

Article 14 of the School Code directly addresses divorced or separated parents by stating that "[i]n cases of divorced or separated parents, ...when both parents retain legal guardianship or custody, the resident district is the district in which either parent who provides the student's primary regular fixed night-time abode resides; provided that the election may be made only one time per school year."⁹ Strictly speaking, this particular section only applies to children with disabilities. However, the reasoning that the location of a child's "regular fixed night-time abode" constitutes the resident district is consistent with the above-noted general School Code residency provision, as well as with residency case law.¹⁰ If the special education student spends more nights with one parent, then the student's residency is the district in which that parent lives. If the special education

student spends equal time between the parents or it changes throughout the year, the parents may opt for either school district as the resident district but only one time each school year.

The upshot is that in the absence of a parenting plan or other court document identifying the parent with the majority of parenting time, schools should gather and request from the parents other information that will assist in determining which parent has the majority of parenting time. This includes, but is not necessarily limited to, information on where the student spends most of his or her nights.

5. What are the transportation rights of a student who lives with both parents at different residences?

A student's transportation rights attach to the residence in which the student lives for school district residency purposes (see question No. 3, above). Once that residence – which we will call the *primary residence* for discussion purposes – is identified, the School Code's student transportation provisions apply to it.

For example, let us say that Student A's primary residence for school district residency purposes has been determined to be Mom's House (either due to Mom being identified as the parent with the majority of parenting time in a parenting plan or due to a residency determination made using the School Code's residency provisions). If Mom's House is located more than 1.5 miles from Student A's assigned attendance center, or is located less than 1.5 miles from Student A's assigned attendance center but walking constitutes a serious hazard due to vehicular traffic or rail crossings, then Student A is generally entitled to receive free transportation to/from Mom's House and school.¹¹ If Mom's House is located less than 1.5 miles from Student A's assigned attendance center, then the school district is generally not obligated to provide free transportation to/from Mom's House and school.¹²

There is no requirement in the School Code for a school district to provide a student with free transportation to more than one residence. So in our example, if Student A's secondary residence is at Dad's House and Dad's House is located within the school district but more than 1.5 miles from Student A's assigned attendance center, the school district is not required to transport Student A to/from Dad's House. The school district may choose to provide such transportation at its own discretion and under its own conditions, but it should consult with the board attorney before doing so.

Note: if a student is a special education student, then transportation services may be deemed a related service necessary for the student to benefit from his or her special education.¹³ In such cases, the transportation services outlined in the student's Individualized Education Program must be provided.

5. Are both parents entitled to receive notices from the school and access to the student's education records?

If the school has been provided a copy of a parenting plan or other court order, then first consult the parenting plan or court order to see if each parent's right of access to education notices and records has been addressed. Otherwise, the School Code provides that absent a court order to the contrary, upon the request of either parent of a student whose parents are divorced, copies of report cards, along with other notices and records, must be furnished to both parents by the school.¹⁴ The same is true for separated/divorcing parents.

School districts that subscribe to the Illinois Association of School Boards (IASB) Policy Reference Education Subscription Services (PRESS) will find these parental rights outlined in sample administrative procedure 7:340-AP1, *School Student Records*, which states in subsection **H. Access to School Student Records** that:

Unless the District has actual notice of a court order or a notice of a *parenting plan* under the Ill. Marriage and Dissolution of Marriage Act, indicating otherwise:

- a. Divorced or separated parents/guardians with and without *parental responsibility* (formerly custody) are both permitted to inspect and copy the student's school student records. 750 ILCS 5/602.11, amended by P.A. 99-763.
- b. The Building Principal shall send copies of the documents listed below to both divorced or separated parents/guardians at either's request. 105 ILCS 5/10-21.8.

- 1) Academic progress reports or records
- 2) Emotional and physical health reports
- 3) Notices of school-initiated parent-teacher conferences
- 4) School calendar regarding the student
- 5) Notices about open houses, graduations, and other major school-sponsored events including student-parent/guardian interaction

This is consistent with a similar provision in the IMDMA, which states that “notwithstanding any other provision of law, access to records and information pertaining to a child including, but not limited to, medical, dental, child care, and school records shall not be denied to a parent for the reason that such parent has not been allocated parental responsibility; however, no parent shall have access to the school records of a child if the parent is prohibited by an order of protection from inspecting or obtaining such records pursuant to the Domestic Violence Act of 1986 or the Code of Criminal Procedure of 1963.”¹⁵

6. Should both parents be invited to attend meetings at the school, such as parent-teacher conferences and individualized education plan (IEP) meetings?

See the answer to No. 5, above.

7. Are both parents able to grant permission for a student to be excused from school (i.e., due to illness, religious observance, college visit, etc.), participate in school-sponsored activities (i.e., field trips, athletics, extra-curricular activities, etc.) or for particular school services (i.e., medication administration, special education)?

If the school has been provided a copy of a parenting plan, then first consult the parenting plan to see if granting permissions has been allocated to one or both parents as a significant decision-making responsibility. The IMDMA defines *significant issues* to include, without limitation:

- Education, including the choice of schools and tutors.
- Health, including all decisions relating to the medical, dental, and psychological needs of the child and to the treatments arising or resulting from those needs.
- Religion.
- Extracurricular activities.¹⁶

If a parenting plan is not available or particular permissions have not been addressed in it, then absent a court order stating otherwise, both parents retain their authority to grant permissions.

Practically, problems may arise if one parent grants permission for an activity but the other parent disagrees and attempts to revoke permission. In such cases, best practice is to discuss the issue with both parents at the same time and attempt to reach a consensus.

In addition, there is nothing preventing a school from contacting the custodial parent when the noncustodial parent grants permission for something (or appears at school to pick up the student or requests student records). Doing so ensures that the custodial parent is aware of relevant activities and keeps lines of communication open.

If problems arise with respect to parent permissions required for providing special education services to children with disabilities, the school district should consult with the board attorney.

¹ The following attorneys are members of the 2018 committee: **Cynthia M. Baasten**, Engler Callaway Baasten & Sraga, LLC; **Maryam T. Brotine**, Illinois Association of School Boards; **Merry C. Rhoades**, Tueth, Keeney, Cooper, Mohan & Jackstadt, P.C.; **Caroline A. Roselli**, Robbins Schwartz; **Brandon K. Wright**, Miller, Tracy, Braun, Funk & Miller, Ltd. The 2019 ICSA Executive Committee provided peer review.

² 750 ILCS 5/602.10(f).

³ 750 ILCS 5/602.7, 5/602.10(b).

⁴ 105 ILCS 5/10-20.12b(a)(1).

⁵ 105 ILCS 5/10-20.12b(a)(2)(i) – (v).

⁶ 750 ILCS 5/606.10, amended by P.A. 99-90.

⁷ 105 ILCS 5/14-1.11b.

⁸ 105 ILCS 5/14-1.11(1).

⁹ 105 ILCS 5/14-1.11.

¹⁰ See *Mina ex rel. Anghel v. Bd. of Educ. for Homewood-Flossmoor*, 348 Ill.App.3d 264 (1st Dist. 2004).

¹¹ 105 ILCS 5/29-3. Note that only the following types of school districts are required to provide free transportation services for students residing at a distance of 1.5 miles or more from the student's assigned attendance center: community consolidated districts; community unit districts; consolidated districts; consolidated high school districts; optional elementary unit districts; combined high school-unit districts; combined school districts if the combined district includes any district which was previously required to provide transportation; and any newly created elementary or high school districts resulting from a high school-unit conversion, a unit to dual conversion, or a multi conversion if the newly created district includes any area previously required to provide free transportation.

¹² *Id.*

¹³ 20 U.S.C. §1401(26); 34 C.F.R. §300.320(a)(4); 105 ILCS 5/14-1.08; 23 Ill.Admin.Code §226.750(b).

¹⁴ 105 ILCS 5/10-21.8.

¹⁵ 750 ILCS 5/602.11(a), amended by P.A.s 99-90 and 99-763.

¹⁶ 750 ILCS 5/602.5(b), amended by P.A. 99-90.