

Divorce and Special Education In Minnesota

When parents divorce, they sometimes have questions about which parent has rights in special education. The federal Individuals with Disabilities Education Act (IDEA) and Minnesota state special education laws and regulations clearly describe parental rights and the school district's duty to meet them. Most rights are unchanged by divorce. The divorce decree or the parenting plan (legal documents describing individual parent's obligations after the marriage ends) is where the relationship among the parents, their child, and the education system should be clearly defined.

Who can make special education decisions?

Minnesota law gives full rights in decision making to either parent in special education unless the school district is "provided with evidence that there is a court order, state statute, or legally binding instrument that specifically revokes these rights."¹

How do legal and physical custody affect decisions about school?

In a divorce decree, both legal and physical custody must be decided for children.²

Joint legal custody is the most common award by Minnesota courts for parents who are divorcing unless there is a very strong reason why it should be taken from one parent.³ Joint legal custody means that both parents keep the right to make important decisions about their children's education, health care, and religious training.⁴ Under joint legal custody, unless the divorce decree or parenting plan is written differently, both parents have the right to:

- Be members of their child's Individualized Education Program (IEP) team
- Be given notice of team meetings
- Be informed of their right to exercise their due process rights

- Receive progress reports
- Have the opportunity to agree or disagree with plans for initial evaluation and placement in special education.

The school must provide written notice of special education meetings to each parent who has legal custody of the child.⁵

Physical custody is separate from legal custody in the divorce decree. Physical custody means the routine daily care, control, and residence of the child.⁶ The court can give sole physical custody, where the child lives with just one parent, or joint physical custody, where the child lives in both homes and daily decisions about the child are structured between both parents.⁷ If the parents have joint legal custody but only one parent has physical custody, both parents keep the rights to receive information, see records, and make decisions regarding special education.⁸

What happens when divorced parents have joint physical custody and live in different school districts?

Questions about the right of the parents to choose the school district often arise in divorce. The law also applies to parents who are legally separated or parents who are residing separately.⁹ Minnesota law responds to this question by saying, "The student shall be a resident of the school district designated by the student's parents."¹⁰ The designated (or home) district also has to be a school district where one of the parents lives. Parents can designate the school district without regard to how much time the child spends with either parent.

However, a Minnesota rule¹¹ says that if the parents of the pupil are separated or divorced and both maintain legal rights to determine the pupil's education but are living in different districts, the district of residence is the district in which the pupil primarily resides for the greater part of the school year.

For a student with an IEP in this situation, it is important for the family to decide which school district is the home district.

Who can give consent when a child receives special education?

When parental consent is needed for special education, the school district can proceed with the signature of only one parent, if the parents share joint legal custody.¹² Because schools need the signature of only one parent, conflict can happen between ex-spouses. For example, if one parent has sole physical custody but shares joint legal custody, the school could proceed with the signature of either parent and begin the proposed action. When both parties have legal custody, the parent who has physical custody has no greater legal rights than the other parent in special education decision-making.

What happens when parents with joint legal custody cannot agree about special education?

In Minnesota, a school district can proceed with changes if *one* parent with legal custody consents to the proposal, but it is helpful when parents cooperate with each other. Some parents choose to come to an agreement or at least to agree on a course of action, before meeting with the other members of the IEP team. If the parents cannot agree, most school staffs use informal means such as school meetings to try to resolve the conflict.

If the parents still do not agree, either one of the parents or the school can request using the alternative dispute resolution process, at no expense to parents.¹³ Conciliation, mediation, or the facilitated IEP team meeting are options.¹⁴

If they cannot reach an agreement, either parent can request a due process hearing.¹⁵ When the issue of the hearing involves a change in educational placement, the child will usually “stay put” in the current school program until the matter is decided.¹⁶

I am remarried. Can I bring my new spouse to the IEP meeting?

Yes, you can. Special education law allows parents to bring other people of their choosing to IEP meetings.¹⁷ An August 2004 letter from the U.S. Department of Education’s Family Policy Compliance Office addresses the issue of stepparents. It said that if a stepparent is present on a day-to-day basis with the natural parent and the child, the stepparent would have the same rights under Family Educational Rights and

Privacy Act (FERPA), as do natural parents.

A “parent” can include a person acting in the place of a parent (such as grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child’s welfare).¹⁸ Depending on the circumstances, stepparents may or may not be able to sign written consents or view school records.

After a divorce, can I still see my child’s school records?

Minnesota and federal law, as well as the FERPA, address parents’ rights to school records. Minnesota parents have the right to see their children’s school records when they ask to see them.¹⁹ A parent keeps these rights, unless the school has been given a copy of a divorce decree stating specifically that the parent no longer is permitted to see the child’s records.²⁰

When a parent asks to see his or her child’s records, the school must show the parent the records immediately, if possible, or within 10 business days from the request.²¹ The school can charge the parent for reasonable costs, such as making copies.²² If the parent believes the records include information that is wrong or violates the child’s privacy, he or she can send a letter to the principal, stating the requested correction.²³ The school will have a procedure to follow regarding accepting the correction or will notify the parent of his or her right to request a hearing.²⁴

If I do not have physical custody, does the school have to send me information about regular school events?

No, schools do not have to provide the parents without physical custody with their own copies of general information such as lunch menus, general notices, PTA information, or conference schedules, etc.²⁵ If there is a written record of the parent-teacher conference, it should be included with the other school records where it can be reviewed.²⁶

A parent without physical custody who wishes to remain involved with a child’s school may make a written request for information and provide a current address to which it can be sent. If the divorce decree does not prevent the parent’s involvement and the parent is willing to cover mailing costs, etc., schools are likely to welcome participation.

Parents with questions about a personal situation regarding the above material may want to contact an attorney.

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(Footnotes)

- 1 34 C.F.R. § 99.4.
- 2 Minn. Stat. § 518.1705 subd. 4 (2004).
- 3 Rosenfeld v. Rosenfeld, 529 N.W.2d 724, 726 (Minn. App. 1995); Minn. Stat. § 518.17 subd. 2 (2004).
- 4 Minn. Stat. § 518.003 subd. 3(d) (2004).
- 5 34 C.F.R. § 300.503(a); Minn. Stat. § 518.17 subd. 3(b) (2004).
- 6 Minn. Stat. § 518.003 subd. 3(c) (2004).
- 7 Minn. Stat. § 518.17 subd. 3 (2004); Minn. Stat. § 518.003 subd. 3(c)-(d)) (2004).
- 8 Minn. Stat. § 518.17 subd. 3(b) (2004).
- 9 Minn. Stat. § 127A.47 subd. 3(a) (2004).
- 10 Minn. Stat. § 127A.47 subd. 3(a) (2004).
- 11 Minnesota Rule 3525.0210 subd.39.
- 12 34 C.F.R. § 300.500.
- 13 20 U.S.C. § 1415(e)(2)(D) (1999).
- 14 Minn. Stat. § 125A.091 subd. 6-9 (2004).
- 15 Minn. Stat. § 125A.091 subd. 12 (2004).
- 16 Minn. Stat. § 125A.091 subd. 22 (2004).
- 17 34 C.F.R. § 300.344.
- 18 34 CFR Section 300.20(a)(3).
- 19 34 C.F.R. § 99.10(b); Minn. Stat. § 13.04 subd. 3.
- 20 34 C.F.R. § 99.4; Minn. Stat. § 518.17 subd. 3 (2004).
- 21 Minn. Stat. § 13.04 subd. 3.
- 22 34 C.F.R. § 99.11(a).
- 23 34 C.F.R. § 99.20(a).
- 24 34 C.F.R. § 99.20(b)-(c).
- 25 20 U.S.C. § 1232g(a)(4)(A) (2004).
- 26 Id.