# Administrative Procedure 323

## STUDENT GUARDIANSHIP, ACCESS AND CUSTODY

### Background

It is essential for the Principal and school staff to determine custody, guardianship and access rights, given that:

- Under the Education Act s. 4(1) "a student is a resident student of the board of the school division in which the student's parent resides," and

- It is the parent who exercises the various responsibilities, rights and entitlements both under the *Education Act*, and as the guardian under the *Family Law Act*.

### Definitions

Access: shall refer to the time that the parent without custody (or primary care) has with the child or children. Access only applies to divorcing or divorced parents.

Custody: shall be used to indicate primary responsibility for, and primary care and control of a child.

Guardian: shall be defined by The Family Law Act (20), as the Act establishes guardianship. Under Alberta law, a guardian has certain entitlements, powers and responsibilities. A guardian is entitled to be involved in making significant decisions about the child and have enough time with the child to exercise the powers and responsibilities.

Parent: shall mean parentage as defined by The Family Law Act (1) and the Education Act 1(2).

### Procedures

1. The Principal shall be responsible for collecting all relevant information that can help determine the specifics of custody, guardianship and/or access as legislated in the *Family Law Act*.

   1.1 The Principal or designate(s) shall carefully review each agreement for authenticity so as to ensure that the school has the most recent order issued in proceedings; and

   1.2 The Superintendent or designate shall be consulted should the Principal or Designate perceive any documentation to be forged, incomplete or unclear.

2. Where a person claims to be a parent or guardian, or claims the existence of any limitation on the authority of the parent or guardian, the onus is on that person to provide proof of the claim.

3. Principals shall communicate to the legal guardian(s), through the student registration process, that if a person claims to be a parent or guardian, or claims the existence of any limitation on the authority of that parent or guardian, the onus is on that person to provide proof of the claim.

4. Guardians shall provide copies of all orders or agreements addressing guardianship rights, responsibilities or entitlement, or otherwise affecting the custody or access to the child for whom registration is sought. Forms of proof may include:

   4.1 Orders issued under the *Divorce Act* by the Court of Queen's Bench should refer to custodial and/or access permissions for the child.

      4.1.1 Court orders addressing guardianship rights of legal guardians can be issued by either the Provincial Court of Alberta, or the Court of Queen's Bench.

   4.2 Court orders issued prior to October 1, 2005, under the now repealed *Domestic Relations Act*, or the *Provincial Court Act*, shall also be valid unless replaced by a new court order or agreement issued under the *Family Law Act* which address custody, access or guardianship issues.

   4.3 Agreements or orders under the former *Child Welfare Act*, or under the new *Child, Youth and Family Enhancement Act* or the *Family Law Act*, which appoint legal guardians may also be provided as proof of guardianship.

5. In rare circumstances, a child may also be impacted by a restraining order issued under the *Child, Youth and Family Enhancement Act*, which limits rights of access by the guardian to the child.

6. Powers, Responsibilities and Entitlements of Guardianship

   6.1 While the parent is usually the legal guardian of the child, that is not always the case. Guardianship rights can be shared by parents or can be lost. Where a child has more than one (1) guardian, the guardians:

      6.1.1 May exercise the powers, responsibilities and entitlements of a guardian, unless the Court orders otherwise;

      6.1.2 Shall provide information to any other guardian relating to the exercise of powers, responsibilities and entitlements of guardianship at the request of that other guardian; and

      6.1.3 Shall use their best efforts to cooperate with one and other; and may enter into an agreement with respect to the allocation of powers, responsibilities and entitlements of guardianship among themselves all as provided for under the *Family Law Act*.

6.2 Except where otherwise limited by a parenting order, each guardian is entitled to be informed of and consulted about and to make all significant decisions affecting the child in the exercise of such powers, and to have sufficient contact with the child to carry out those powers and responsibilities.

6.3 Guardianship rights can be removed or affected by a separation agreement under the *Divorce Act*, through a parenting agreement made under the *Family Law Act*, by custody or access orders issued under the *Divorce Act*, or through court orders including Parenting and Contact Orders made under the *Family Law Act*.

7. The Principal shall be responsible for ensuring that all such Court orders or agreements are securely stored, and that such information is only shared on a need to know basis, and that guardians/parents are aware of the need to update such information on an annual basis.

8. If the Principal is faced with requests for access to a student by a guardian whose rights of access to the student are limited by the terms and conditions of a custody or access order, or a parenting or similar order, the Principal shall:

8.1 Remind the guardian(s) of their responsibility to provide the school with a copy of the most recent order impacting the custody, access or guardianship rights. In the event of a dispute the claimed entitlement/restriction could be verified with any other legal guardian noted on the student record;

8.2 Carefully assess limitations set out within the custody and access agreement or guardianship order to determine if they limit the guardian's right to access the student during school hours or on any school premises or any school sponsored activities. Any such limitations must be enforced;

8.3 Depending upon the limitation specified in the order, deny the guardian access to the student during school hours or on any school premises or at any school-sponsored activities, in accordance with the terms and conditions of the relevant order and/or agreement; and

8.4 Take such other further steps as are deemed necessary, in consultation with the Superintendent or designate (Deputy or Assistant Superintendent).

9. Where the legal guardianship rights and/or entitlement respecting a child are in dispute, and one of the guardians is making a demand for access, the Principal is to:

9.1 Inform the claimant of the obligation to provide documentation in support of the authority of the guardian to access the child;

9.2 Conduct operations that adhere to the most recent court orders and/or agreements issued and received with respect to the guardianship of the child; and

9.3 Ensure that any other individual claiming to have legal guardianship rights, has been given the opportunity to verify that the Division has the most recent and relevant documentation respecting guardianship and/or access to the student.

10. In the event of a dispute, between the guardian and the Principal, which results in a disturbance or interrupts the proceedings of the school, over the rights of access to the student, the Principal shall:

10.1 Where the governing documents clearly deny the guardian the right of access to the student, take such steps as are reasonably necessary to avoid the recurrence of the issue, which can include the issuance of an appropriate notice under Section 256 of the *Education Act*; and

10.2 Consult with the Superintendent or designate.

| Reference: Education Act 1(2), 4, 256<br>Child, Youth and Family<br>Enhancement Act<br>Divorce Act<br>Family Law Act<br>Student Records Regulation<br>(97/2019) | |
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| | Date Approved: April 1, 2021 |
| | Reviewed or Revised: Executive: April, 2021 |

References shall be updated as required and do not require additional approval.