STUDENTS
Resolution of Conflicts Between Parents Over School Issues

This regulation delineates who may act as a parent for a minor student, including making educational decisions, and provides guidance to address situations where parents disagree with each other regarding their child’s education or other issues involved with the public schools. Such disagreements typically arise with separated or divorced parents, but this regulation is not limited to those circumstances.

I. Definitions: As used in all regulations falling under Policy 794, “Parent Participation Rights and Resolution of Conflicts Between Parents Over School Issues,” the following terms have the meanings given in this part.

“Custodial Parent” means a biological parent who has legal custody of the child in either a joint or sole arrangement with the other parent. Note that biological parents who are married couples, or unmarried couples where paternity is not an issue, have joint legal and physical custody until a court changes the parties’ rights. Legal custody entitles a parent to have responsibility for the care and control of the child and to make decisions concerning the child even though the child’s primary residence may be with only one parent. A custodial parent may also be an adoptive parent or a person to whom a court has awarded legal custody of the child as demonstrated by a court order. Biological parents may also be referred to as natural parents in School Board policies and regulations. Note that nonparents who are authorized to act as parents pursuant to a power of attorney authorized by state or federal law and as described in Section I of Regulation 794-8, “Participation of Nonparents in the Child’s Education,” may exercise the rights of custodial parents so long as the power of attorney is in effect and the terms of the power of attorney do not provide otherwise.

“Legal Guardian” means a person to whom a court has awarded legal custody of the child. A guardian ad litem is not a child’s legal guardian.

“Noncustodial Parent” means a biological or adoptive parent who has been denied legal custody of the child by means of a court order. Note that an order denying a parent legal custody of the child is not the equivalent of an order terminating parental rights. See definition of “Parental rights terminated” below. A noncustodial parent retains certain rights concerning the child under federal and/or state law and as described in this regulation including the right to access school records, to participate in school activities where parent attendance or participation is permitted or encouraged by the schools, and to participate in the special education process as described in this regulation.
“Nonparent” means a person who may have a relationship or involvement with the child, but who does not have the same legal rights as a parent to make educational decisions for the child, to have access to school records, or to otherwise participate in the child’s education without the consent of a parent, a court order, or other applicable legal authority. Nonparents include, but are not limited to: stepparents, family members other than the child’s biological parents or legal guardian, other caregivers, parents’ advocates or attorneys, state or county department of social services employees, a guardian ad litem (GAL) or a court appointed special advocate (CASA) assigned to the child.

“Parental rights terminated” means that a court order has terminated parental rights. This usually occurs as a result of adoption or because of a petition by the Department of Social Services. A person whose parental rights have been terminated has no rights to make educational decisions for the child, to access the child’s educational records, or to participate in school activities with the child, and is considered a “nonparent” under this regulation.

“Physical Custody” means the child’s residence with a parent on a full or part-time basis.

“Primary physical custody” is held by the parent with whom the child resides the preponderance of the school week. It is of relevance to educational decision making as it pertains to responsibility to furnish general school information to the other parent as described in Regulation 794-5, “Parents’ Rights Regarding Information About the Student,” to resolution of disputes concerning the release of the child as described in Regulation 794-6, “Resolution of Conflicts Between Parents Regarding Release of the Child,” and to resolution of parental disagreements over educational decision making as described in Section II below. If parents share physical custody on an equal basis and only one parent resides within Prince William County, that parent shall be deemed the parent with primary physical custody. If both parents share physical custody on an equal basis and both reside within Prince William County, the parent who resides within the school boundary of the school the child attends shall be deemed the parent with primary physical custody. If both parents share physical custody on an equal basis and both reside within the school boundary of the school the child attends, the school principal shall permit the parents to select which parent shall serve as the parent with primary physical custody; if the parents do not agree as to a designation, the school principal shall designate the parent with primary physical custody by lot. The parent with primary physical custody may change over the course of a student’s school career if the child’s residence or custody changes. The designation of the parent with primary physical custody shall reflect the student’s actual residence.
II. Educational Decisions (Not Pertaining to Special Education)

A parent with sole legal custody or who has been designated by court order as having final authority over educational decision making has the sole right to make educational decisions for the child regarding issues where the parent has a role.

Parents with joint legal custody (regardless of physical custody) share the responsibility for school activity decisions. School staff shall assume that an educational decision communicated to school administration by one joint custodial parent constitutes the decision of both parents unless the other custodial parent notifies the school principal in writing that he or she does not agree. If parents with joint legal custody cannot agree, then it is the responsibility of the parent with primary physical custody to secure a compromise with the other parent. If a compromise cannot be secured, the school will follow the instructions of the parent with primary physical custody.

Neither a parent with sole authority to make educational decisions nor a parent with primary custody authorized under this section to act as the decision maker in the event of parent disagreement may use their decision making power to deny the other parent access to student records, to pick up the child from school except as described in Regulation 794-6, “Resolution of Conflicts Between Parents Regarding Release of the Child;” to be listed on the emergency card, to participate in the special education process, or, to attend school conferences and activities.

III. Decisions Pertaining to Special Education

State and federal laws pertaining to the provision of special education provide special rules regarding who may act as a parent for special education decision making. The person who is authorized to act as the child’s parent for special education decisions is decided in this order:

A biological or adoptive parent of a child regardless of custodial status unless the parent’s parental rights have been terminated by court order. In any situation, where a biological or adoptive parent whose parental rights have not been terminated by court order is attempting to act as the parent for special education decision making, the biological or adoptive parent shall be presumed to be the decision maker. In situations where there is more than one biological or adoptive parent who may act as the decision maker for special education purposes, the consent of only one such parent is necessary to authorize evaluation or services for the child. Likewise, the revocation of consent by one parent for receipt of special education and related services is sufficient.
If no biological or adoptive parent as described above can be located or is willing to act as the decision maker for special education purposes, a foster parent may act as the decision maker so long as the school has provided written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent for special education decisions. If the biological or adoptive parent later decides to act as the decision maker for special education purposes, the foster parent shall no longer be deemed the decision maker.

If neither a biological or adoptive parent nor foster parent is willing to act as a parent for special education decision making, a guardian generally authorized to act as the child's parent who is authorized to make educational decisions for the child, an individual acting in the place of a biological or adoptive parent (including grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare may act as the child’s parent for special education purposes.

If the school is unable to locate any person listed above who is willing to act as the child’s parent for special education purposes, the School Division may appoint a surrogate parent following the procedure set forth in §20-81-220 of Title 8 of the Virginia Administrative Code.

If a court order identifies a specific person listed above to act at the child’s parent or to make educational decisions for the child, that person shall be permitted to act as the parent for special education purposes.

State law specifically prohibits the following persons or agencies from acting as a child’s parent for special education decision making: local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency; the Commonwealth if the child is a ward of the Commonwealth; or, a guardian ad litem appointed for the child.

Guardians ad litem, court appointed special advocates, parent attorneys, advocates and other nonparents may only attend special education meetings if invited by a person authorized to act as the child’s parent for special education purposes.

The Associate Superintendent for Special Education and Student Services (or designee) is responsible for implementing and monitoring this regulation.

This regulation and related policy shall be reviewed at least every five years and revised as needed.