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Student Custody Orders, Restraining Orders and Addressing Requests from Registered Sex Offenders

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Presenter



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Roadmap



- Types of Custody
- Parental Rights
 - Access to Education Records
 - Visiting a Child at School
 - Volunteering
 - Enrolling/Disenrolling a Student
 - Stepparent Rights
- Pick-Up and Drop-Off
- Restraining Orders
- Registered Sex Offenders

Custody Orders



Types of Custody

Joint Custody

Family Code section 3002 defines joint custody as joint legal and physical custody. A court may award joint legal custody without awarding joint physical custody, or vice versa.

Joint Legal Custody

Joint legal custody means that both parents share the right and the responsibility to make decisions relating to the health, education and welfare of the child. (Fam. Code, § 3003.)

Joint Physical Custody

Joint physical custody means that each parent must, "have significant periods of physical custody" shared "in such a way as to assure a child of frequent and continuing contact with both parents." (Fam. Code, § 3004.)

In California, there is a presumption that joint custody is in the best interest of a minor child. (Fam. Code, § 3080.)

Types of Custody

Sole Legal Custody

When a parent has been awarded sole legal custody, that parent has the sole right and responsibility to make decisions relating to the health, education and welfare of the child. (Fam. Code, § 3006.)

Sole Physical Custody

Sole physical custody means that a child shall reside with and be under the supervision of one parent, while the other parent may be granted visitation by court order. (Fam. Code, §§ 3007, 3100, subd. (a).)

Parental Rights – Access to Education Records



- Regardless of custody, natural and adoptive parents have absolute access to child's educational records.
- Only the parent with legal custody may challenge the content of a record, offer a response to a record, or consent to the release of records to others.

Hypothetical – Access to Records



FACTS

- Father has sole physical and legal custody of Son. Mother has visitation once a week with Son for two hours. Mother comes to the front office and requests a copy of Son's grades and attendance records.
- What do you do?

Parental Rights – Visiting a Child at School

- Only a parent with physical custody has the right to visit the child at school or remove them from school property.
- School is not required to hold separate parent-teacher conferences to accommodate divorced or separated parents.
- A parent who lacks legal custody should not be allowed to remove their child from class or other educational activity without written consent from the legal custodial parent.

Parental Rights – Volunteering



- Both parents have the right to volunteer at school and be involved in their child’s education unless it conflicts with a valid restraining order or custody/visitation court order.
- However, a parent’s criminal record may impact their ability to volunteer.

Parental Rights – Enrolling/Disenrolling a Student

- In the absence of a court order, both parents listed on the student's Birth Certificate may enroll/disenroll their child from school.
- A parent without legal custody does not have the authority to make decisions regarding their child's education.
- If both parents share joint legal custody, either parent may enroll/disenroll their child.
- Caregiver with a valid caregiver affidavit, may enroll a student in school.



Hypothetical – Enrolling in School



FACTS

- Father brings in a court order that says, “Mother and Father to share joint legal custody, with Father having final decision-making on all legal custody decisions.” Father wants to enroll the child in school, but Mother disagrees and wants to homeschool child.
- Should the school enroll the child?

Parental Rights – Stepparent Rights



- Generally, stepparents have no right to request access to a student’s records or request a change in the records without the consent of the custodial parents.
- A parent with legal custody may allow a stepparent to make educational decisions on behalf of their child by executing a power of attorney.
- A parent of a student with an IEP may assign their educational rights to another adult, including a stepparent.



Pick-Up and Drop-Off

- Generally, parents pick-up and drop-off their children during their custodial time as designated on their custody orders.
- Schools do not have the resources to monitor every pick-up and drop-off.
- **However, do not release children to parent that lacks physical custody.**
- Extra care should be taken if the school is aware that a restraining order or child abduction prevention order is in place.

Hypothetical - Who Can Exercise Decision-Making Authority?

FACTS

- Minor Student's parents are divorced and share joint legal and physical custody. Student has a new stepparent who asks to participate at Student's IEP meeting.
- What decision-making authority does the stepparent have, if any?



Hypothetical – Parent with Supervised Supervision



FACTS

- Court order says Father has professionally supervised visitation with Daughter. Father shows up to the school to have lunch with Daughter.
- Should the school allow Father to have lunch with Daughter?

Custody Orders – Best Practice Tips

1. If parents are divorced or separated, request the current custody order.
 - Remind parents that the school should be notified immediately if there is any change to the custody order.
2. Be aware of circumstances where a parent's right to make educational decisions has been limited by the court even though parent continues to retain legal or physical custody.
3. A valid court order is always signed by a judge and issued by the court.
4. After reviewing the order, confirm if there will be changes to the emergency pick up list or changes to the way the child is picked up from school, e.g., car pick-up, classroom pick-up, walking, etc.
5. Never release student records to an unknown parent or contrary to a court order on file.
6. Stay neutral – don't take sides and don't write letters of support for one parent.
7. Place custody order in cum file.
8. Consult legal counsel to assist in interpreting the order(s) and to seek advice on next steps.

Restraining Orders

The background features a dark blue field on the left, transitioning into a complex geometric pattern of overlapping triangles and lines in various shades of blue on the right. The lines and shapes create a sense of depth and movement, with some areas appearing as thin, parallel lines and others as solid, overlapping planes.

Restraining Orders

- A restraining order (sometimes called a “protective order”) is a court order that can protect someone from being abused, threatened, stalked, or harassed.
- If granted, a restrained party will not be able to go to certain places or to do certain things, and generally will not be able to own a gun. If the person to be restrained violates the restraining order, he or she may go to jail, or pay a fine, or both.



Restraining Orders – Types



- There are different types of restraining orders:
 - Domestic violence
 - Civil harassment
 - Elder abuse
 - Gun violence
 - Workplace violence
 - School violence
- Schools commonly deal with domestic violence or civil harassment restraining orders.

Protective Orders

- Protective orders are either requested by police or issued by a judge in a criminal matter to protect a victim of a crime or a witness.
- The protective order can require a defendant to:
 - Not contact people protected by order.
 - Not harass/stalk/threaten/hurt.
 - Stay a certain distance away.
 - Not have guns/firearms/ammunition.
 - Not try to keep a victim or witness from testifying.

Restraining Orders and Access to Information

5 **Stop Access to Children's School, Health, and Other Information**

a. The person in **2** must not access or have access to the records or information for:

All the children listed in **3**.

Only the children listed here (*names*): _____

b. From the following (*check all that apply*):

Medical, dental, and mental health providers

School and daycare providers

Extracurricular activity providers, including summer camps and sports teams

Child's employers (including volunteer and unpaid positions)

Other (*describe*): _____

! If you are a provider listed above, you must not release information or records regarding the children listed in **5**a to the person in **2**.

This is a Court Order.



Restraining Orders – Enforcement

- While a school district has a duty to supervise and provide its students with a safe educational environment, enforcement of restraining orders is the responsibility of state and local law enforcement, and the obligations under the order apply to the parties themselves.
- Advise the protected party (parent, student) to contact law enforcement if they believe that a restraining order has been violated.



Hypothetical – Restraining Order



FACTS

- Court order limits mother's boyfriend's access to the children. Mother and boyfriend wait in car to pick up children.
- Do you release the children to their mother even though it violates the court order?
- Are you required to notify law enforcement?

Restraining Order – Student-on-Student



- All students, including restrained students, have a right to attend school.
- Unless otherwise expressly made a party to a restraining order proceeding and directly ordered to take specific steps, the District is unable to unilaterally transfer any student in order to comply with a restraining order.

Restraining Order – Students

- The District should employ reasonable efforts to comply with the restraining order, e.g., physical distance requirement.
- Request to meet with the protected party to discuss any necessary steps to protect the child’s wellbeing at school.
- Consider supportive measures that can be put in place, e.g., no contact order.



Restraining Orders – Best Practice Tips

- If a parent refers to a restraining order, request a copy of it.
- Confirm order was issued by the court.
- Always check the expiration date of the restraining order.
- Beware of the “Proposed Order”.
- Consult legal counsel to assist in interpreting the order(s) and to seek advice on next steps.

Hypothetical – Restraining Order



FACTS

- Mother has a temporary restraining order against Father with the child named as a protected party. Father comes to school and wants to pick-up the child and while there, asks for the child's attendance records.
- What should you do?

Registered Sex Offenders



Parent Sex Offenders and Presence on Campus – Lawful Business

- Penal Code section 626.81 requires all sex offenders (whether a parent, student or others) to have advance written permission from the site administrator prior to entering onto school grounds for lawful business purposes.
- There is no express permission in the law to bar sex offenders from legitimate use of public services.
- Examples of “lawful business” for parents include:
 - Coming to campus to pick up or drop his or her child for school;
 - Attending parent teacher conferences; and
 - Attending school events in which their child is a participant.

Parent Sex Offenders and Presence on Campus – Written Permission

- Written permission must come from the “chief administrative officer”, which is defined as the principal or designee. Written permission must also include the “date or dates and times” a registered sex offender can enter school grounds.
- The District can consider these options:
 1. Provide blanket permission for the parent to drop off and pick up their child and attend certain events, e.g. meetings, parent and teacher conferences;
 2. Provide blanket permission for the parent to drop off and pick up their child from school, but require the parent to obtain separate written permission before entering school grounds for any other purpose; or
 3. Require the parent obtain separate, written permission before entering school grounds at any time, e.g. at least 48 hours before entrance.

Parent Sex Offenders and Presence on Campus – Written Permission

The District may also include reasonable rules for the parent being on campus, such as one or more of the following when providing the parent written permission:

1. Specify the parent only be present on school grounds within 10 minutes of the event's start time and up until 10 minutes after the end of the event.
2. State that written permission can be revoked at any time at the District's discretion.
3. Designate a location where the parent can engage in the school activity and can also allow staff to monitor the individual.
4. Require the parent to be accompanied by a District employee at all times when they are present on school grounds.

Parent Sex Offenders and Presence on Campus – Denying Permission

- CA law provide that parents have a right to participate in their children’s education.
- Whether the District can deny permission depends on why the parent wants to enter school grounds.
- The District probably has discretion to deny permission if the parent wants to attend an event or activity in which their child is not participating, or to engage as a volunteer or chaperone, which has the potential for unsupervised contact with children.
- In addition, the District may also consider the recency and egregiousness of the offenses and the activity the parent wants to attend.
- If the District believes it has a basis to deny access, it should contact legal counsel first.

Parent Sex Offenders and Volunteering

- Registered sex offenders must disclose their status when applying or accepting a position to volunteer at a school.
- If previously convicted for a crime where the victim was a minor under 16 years of age, a registered sex offender, even if a parent, **cannot** serve:
 1. As a non-teaching volunteer aide; or
 2. As a volunteer working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or in a position having supervision or disciplinary power over minor children.
- However, if the sex offender's conviction involved a victim of over sixteen (16) years of age, the bar to volunteering may not be absolute.

Non-Parent Sex Offenders and Volunteering

- Other registered sex offenders may be able to volunteer at a school depending on if a student at the school is a family member.
- If they are not a family member, the District may provide the registered sex offender permission to volunteer but must notify the parents/guardians of every student who attends the school at least 14 days before the date permission will be effective.
 - The District does not have to grant these registered sex offenders permission and we recommend against doing so unless appropriate and robust supervision is provided.

Hypothetical – Parent with Supervised Supervision



FACTS

- Court order says Father has professionally supervised visitation with Daughter. Father shows up to the school to have lunch with Daughter.
- Should the school allow Father to have lunch with Daughter?

Hypothetical – Registered Sex Offender



FACTS

- A father is a registered sex offender who wants to come onto campus to pick up his child from the afterschool program and to attend other school-related events.
- District practice is that all parents who pick up their students after school must call to gain entrance to campus and then must sign their student out from the cafeteria.
- What are the father's rights and how can the school/district restrict?

Hypothetical – Registered Sex Offender



FACTS

- A district parent has a significant other who is a registered sex offender. The significant other wishes to attend events in which the parent's child is participating in.
- Is the District required to allow the significant other on campus?

Questions?

The background is a dark blue gradient. On the right side, there are several overlapping geometric shapes, including triangles and lines, in various shades of blue, creating a dynamic, abstract pattern.



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