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Q & A: Parental Rights Retained by Non-Custodial Parent

The Minnesota Department of Education (MDE) Division of Compliance and Assistance has developed this document to address questions raised by parents and school districts regarding the rights of a non-custodial parent to participate in the Individual Education Plan (IEP) team process.

Question 1: If, as part of a custody proceeding one parent is awarded sole legal custody of a child, does the non-custodial parent retain rights to participate in the IEP team process?

Answer: Both federal and Minnesota law define parent to include a natural, biological or adoptive parent of a child. Minn. R. 3525.0210, subp. 34. A and 34 C.F.R. § 300.30. Parents of children with disabilities have a right to be involved by the school district in the education decision-making process by participating or being afforded the opportunity to participate at each IEP meeting to develop, review, or revise the IEP. Minn. R. 3525.0700. Additional parental participation rights are found in 34 C.F.R. § 300.501:

- (a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of Sec. 300.613 through 300.621, an opportunity to inspect and review all education records with respect to--
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.
- (b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
 - (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child.(2) Each public agency must provide notice consistent with Sec. 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
- (3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (c) Parent involvement in placement decisions. (1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

- (2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in Sec. 300.322(a) through (b)(1).
- (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
- (4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.

The right to parental participation may be limited under 34 C.F.R. § 300.30(b) as follows:

- (b) (1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.
- (2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (4) of this section to act as the ``parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the ``parent" for purposes of this section.

In Minnesota, custody is comprised of two parts, physical and legal custody. While physical custody addresses the residence of the child, legal custody addresses the right to determine the child's upbringing, including education. Minn. Stat. § 518.003, Subd. 3. During a custody proceeding, a court may award joint legal custody meaning both parents retain equal rights and responsibilities, including the right to participate in major decisions determining the child's upbringing, including education.

However, if one parent is awarded sole legal custody, the parent with sole legal custody retains all rights to determine the child's upbringing, including education. Minn. Stat. § 518.003, Subd. 3. Even with an award of sole legal custody, Minnesota law retains certain rights for the non-custodial parent unless the court order makes specific findings to further limit that parent's rights.

- (b) The court shall grant the following rights to each of the parties, unless specific findings are made under section 518.68, subdivision 1. Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Each party shall keep the other party informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent-teacher conferences. The school is not required to hold a separate conference for each party. In case of an accident or serious illness of a minor

child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment. Each party has the right to reasonable access and telephone contact with the minor children. The court may waive any of the rights under this section if it finds it is necessary to protect the welfare of a party or child.

Minn. Stat. § 518.17, Subd. 3

**PARENTAL RIGHTS FROM MINNESOTA STATUTES, SECTION 518.17,
SUBDIVISION 3**

Unless otherwise provided by the Court:

(a) Each party has the right of access to, and to receive copies of, school, medical, dental, religious training, and other important records and information about the minor children. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.

(b) Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party.

(c) In case of an accident or serious illness of a minor child, each party shall notify the other party of the accident or illness, and the name of the health care provider and the place of treatment.

(d) Each party has the right of reasonable access and telephone contact with the minor children.

Minn. Stat. § 518.68, Subd. 1.

As stated above, in Minnesota both parents retain the following education-related rights unless specific findings to the contrary are contained in a court order:

- Each party has the right of access to, and to receive copies of, school records and information about the minor children.
- Each party shall keep the other party informed as to the name and address of the school of attendance of the minor children.
- Each party has the right to be informed by school officials about the children's welfare, educational progress and status, and to attend school and parent-teacher conferences. The school is not required to hold a separate conference for each party.

Therefore, absent a specific court order stating otherwise, non-custodial parents should be notified of IEP meetings and be given the opportunity to participate in them but will not

have the right to participate in the education decision-making part of the IEP Team process.

Because it must be presumed that both parents have equal rights to make decisions for a child unless there is a court order stating otherwise, districts are reminded that it is important to request a copy of the court order to help determine who has authority to make educational decisions for the child.

Authority: 34 C.F.R. § 300.30(b); 34 C.F.R. § 300.501; 34 C.F.R. § 300.534; Minn. R. 3525.0700; Minn. R. 3525.0210, subp. 34; Minn. Stat. § 518.17, Subd. 3; Minn. Stat. § 518.68, Subd. 1