



Association of Family and Conciliation Courts

An Educator's Guide: Interacting with Separating, Divorcing, Never-Married Parents and Their Children

**AN EDUCATOR'S GUIDE:
INTERACTING WITH SEPARATING, DIVORCING, NEVER-
MARRIED PARENTS AND THEIR CHILDREN**

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This guide was developed by the Association of Family and Conciliation Courts to help educators address the needs of separating, divorcing and never-married families and their children. AFCC is an international, multi-disciplinary organization comprised of attorneys, judges, mediators and mental health care providers who are dedicated to improving the lives of children and families through the resolution of family conflict.

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INTRODUCTION

When a family experiences separation and divorce, areas of disagreement typically exist between the parents. At times, these may include disputes about where the children will live and how much time they will spend with each parent. Some families negotiate these life transitions with little overt conflict. Other families seem to go to war over these decisions, and often try to get the teachers and school officials to align themselves with one side or the other. Regardless of the level of conflict between the parents, the children face many changes and challenges at this time in their lives. The higher the level of parental conflict, the more difficult it may be for the children to handle these changes. Educators are in a unique position to help the children navigate and deal with some of these challenges.

One of the first challenges the children face is learning to navigate living in two separate households that function independently and differently from one another and from the original intact family home. Children frequently find themselves caught in the middle between their parents and sometimes between their extended families on both sides.

This conflict is rarely confined to the respective home of each parent or to the courtroom. In varying degrees, the conflict spills into the lives of all family members, and typically it permeates the lives of the children, including their time at school.

Educators contribute significantly to the ongoing adjustment of children living in multiple households. We hope to provide you with additional information, perspective and tools to help you enhance your contribution. We also hope that demystifying the role of the Court and other family law professionals will facilitate your interactions with them in your role as an educator.

For many children, school is the one place that provides them with structure, consistency and a space relatively free from family-related turmoil. For others, it is one of the only places where children feel as if they have some control over their lives. For most, it is the place they spend the most extended time with any adult.

At all grade levels, the school environment and the professionals in it have a significant role in the lives of these children. For some children, their comfort and freedom at school may result in top notch academic performance or involvement in extracurricular activities. For others, school becomes a place to act out their inner turmoil through behavioral and academic difficulties.

Teachers and other educators are in a unique position to understand children caught in custody disputes and to support them as they experience these unusual emotional pressures in daily living.

This guide addresses several objectives. First, it provides information to help you better understand situations engendered by family breakups or reorganization and multiple homes, as well as increase your sensitivity to the challenges students face. Second, it offers examples of successful strategies to facilitate interactions with these family members. Third, it describes the significance of your role in the event the family or the Court seeks your input in civil litigation. Finally, the Appendices provide helpful references.

Note: This document has been written by individuals who reside in the United States, and some of the specific processes may not be applicable internationally. There is a Basic Canadian Family Law Addendum in Appendix E, and it is our hope that other countries' law sections will eventually be added. The need to work collaboratively assisting children in the midst of a separating or divorcing family process is, however, universal.

CHILDREN: RECOGNIZING THEIR CHALLENGES

Typical Social and Developmental Challenges

Educators are generally familiar with the many social and developmental challenges that children face during their school years. In early childhood there are issues of separating from family. Elementary students may struggle with questions of competence, failure and perfection. Students in the middle years begin to work out identity and social belonging issues. Adolescents face a depth of confusing feelings about their autonomy, sexuality and direction in life. And most school age children worry about school performance and friendships.

Additional Challenges for Children of Separation and Divorce

The children of separated, divorced or never-married families have an even longer list of worries that either add to the ordinary challenges or exacerbate them. Nothing is familiar to children who must learn to face the loss precipitated by separation or divorce. They experience the stress of having parents in conflict and being placed emotionally in the middle. They may even be asked to make a choice between their parents.

Compounding this unfamiliarity is often their belief that nobody else has experienced this situation or shared these feelings. Despite the frequency of multiple household situations, children are faced with a culture that continues to identify the single, two-parent household as the norm. As a result, these children may experience feelings including loneliness, embarrassment, anger and shame.

Many children must also deal with the ambivalence that comes with parental dating, marriage, stepparents and having their loyalties tested. The range of emotions children experience can be broad and intense. Some common experiences of children during this time include:

- **Fear** – a sense of the unknown, vulnerability or abandonment

- **Sadness** – tearfulness, moodiness, withdrawal, somatic concerns
- **Feelings of responsibility** – thinking the breakup is their fault, that it is their job to care for each parent and themselves in adult ways that are inappropriate for their age
- **Loneliness** – as their parents may be preoccupied and unavailable
- **Rejection** – questioning their self worth
- **Conflicting loyalties** – feeling as if they have to choose one parent over the other, or decide which one is telling the truth, associated guilt
- **Anger** – hitting, temper tantrums, verbal attacks, fights, acts or threats of aggression
- **Anxiety** – sleeplessness, excessive worries, rituals, obsessions, preoccupation
- **Sensitivity** – inability to handle constructive suggestions, criticism
- **Exhaustion** – emotional and/or physical
- **Disengagement** – withdrawal from friends, homework, school attendance, grades, social activities, plans for the future
- **Confusion, disorientation, forgetfulness** – trouble adapting to parenting schedules, forgetting whose house on which day, difficulty keeping track of the location of homework, sports equipment, musical instruments, favorite jacket, etc.

What should you look for? Possible Behavioral Reactions to Separation or Divorce:

- Decrease in attention/concentration/attentiveness to details, withdrawal, narrowing of interests
- Increase and intensification of behaviors such as daydreaming, mistakes, aggression, need for approval, restlessness, attention seeking, demands
- Illness – somatic complaints such as stomach aches, more visits to the nurse, absenteeism or tardiness
- Decline in academic productivity – decrease in homework completion, inability to concentrate, declining grades
- Regression – whining, clinging, carrying security toys, pulling at hair, twitching, absent-mindedness, moodiness, difficulty with changes in routine, irritability
- Poor peer relationships
- Manipulation – learned as a coping behavior
- Excess worry about adult (parents') issues such as money, mental health, availability of parent time
- Emotional over-compensation – extreme maturity, acting as the class clown
- Intensification of behaviors – more intense anger, destructive, rebelliousness, withdrawal, self medication for teens

Possible Interventions: How can you help?

- Ask children directly about the source of their behaviors.
- Talk to them often and be available to listen to them as much as possible.

- Create a culture in your classroom that is inclusive of the variety of family structures in which students live.
- Try to be familiar with the child's schedule. Be sensitive to the transition of changing households without letting it be an excuse for avoiding responsibilities.
- Avoid engaging in good parent vs. bad parent images and references.
- Help create organizational systems to assist the child getting his or her school materials to and from both households.
- Be especially attuned to behavioral changes around holidays, as they can be a source of stress for the child.
- Check with the child about making gifts for parents. Don't assume each child will want to make a gift for each parent.
- When asking younger children to draw their family, provide alternatives to drawing "one house" such as allowing them to draw a family tree or more than one home.
- Be aware of behaviors that warrant further inquiry and, possibly, further intervention such as extremely aggressive or withdrawn behavior, self-destructive threats or actions, or sexual acting out.
- Consult with and refer to other professionals whenever you are concerned about a child.

Available Resources: Where can you go for help?

- Guidance Counselor: Refer parents to the school guidance counselor to discuss the possibility of group or, if needed, individual sessions for the child within the school. (For Guidance Counselors: Identify local resources for families experiencing separation and divorce so you have a referral base.)
- Books: Keep relevant books in the classroom. For younger children you can read books to your class about children experiencing separation and divorce. (See Appendix C.)
- Librarian: Ask the librarian to order relevant books for the library.
- Internet: Check the Internet for Web sites that can offer suggestions for helping these children and for helping their parents to help their own children.

PARENTS: FACILITATING THEIR INVOLVEMENT

Challenges for Parents

Research clearly indicates that having parents involved in their children's education increases the likelihood of their academic success. Parental involvement in their child's school may be severely affected by their separation or divorce.

When a family reorganizes, the student is not the only person impacted. The parents are also being confronted with having to make numerous adjustments, raising their stress level. Unfortunately, supporting their child's academics may drop on the list of their

priorities while they attempt to meet the challenges of their new roles. They may not even think to notify the teacher of their new family situation.

A parent who previously was available for classroom activities may now be employed during the day. Parents who successfully coordinated their child's schoolwork may now have only limited contact with one another. There also may be a parent who has never directly interacted with the school because the other parent was the school contact. Sometimes there are non-school conflicts that interfere with the parents' ability to cooperate about school related issues. Sometimes the resident parent will ask his/her new spouse/partner to take responsibility for the child's schoolwork, which may create its own network of problems.

How Can You Help the Parents?

There are three important ways that educators can help facilitate separated, divorced or never-married parents' involvement in their children's education:

- Educate the parents.
- Increase accessibility to the school.
- Advocate for policies that support these efforts toward accessibility and parental involvement.

Note: When this document refers to "parents," it denotes the people who are taking a part in parenting the student. They may have a different title – aunt, uncle, grandmother, or a legally defined status, such as guardian. There also may be more than two adults or caregivers living in separate locations. Given this diverse group of parental figures, the words "parent" or "household" are used, rather than more inclusive language, for simplicity.

Educating Parents

Teach the parents that students with more than one household need all households involved in their education.

Educators, particularly classroom teachers, know the importance of parental involvement. Many already make an extensive effort to share that knowledge with parents by sending notes home encouraging parents to read with their children, inviting parents to parent-teacher conferences, or providing easy access via email. All of these efforts are aimed at drawing parents into becoming, or remaining, active participants in their child's educational process.

However, many of these efforts assume that students live in traditional nuclear families and reside in the same household as both parents. We have become accustomed to one parent being active with the school while the other focuses on work outside the home. This is often a functional model for single family households. It is important to be aware that sending the message that one parent participating at school is sufficient may be the wrong message for children of divorced or never-married families. Increasingly, these children are spending time residing in two different residences and may even stay

alternating weeks with each parent. While these schedules can provide children the benefit of frequent contact with both parents, it also can create additional organizational challenges for both children and educators. Their families may need to be reminded of the importance of having *both households* actively participating in their child's education.

There are a number of ways that teachers can share this message. While some situations do not require any change in strategy, they may require additional effort. For example, if a note is sent to parents encouraging them to read for thirty minutes with their child, it should emphasize the importance of this occurring in all households. This will remind parents that their children will benefit from all parents in all households participating in this reading initiative. Of course, the note should be sent to all available parents regardless of the student's primary residence.

Parents can also learn the importance of "other parent" inclusion, by observing the teacher's modeling. When the parent first meets the teacher at the beginning of the year, the teacher may inquire (while reviewing the child's registration form), "Does Susie have another parent who doesn't live in your home? We believe it's important for all parents to be involved in what we do in the classroom. What is the best way for me to contact them?" This sends a clear message to the parent that the classroom is inclusive of "other parents." If there is important information to be communicated, make sure you speak or write to all parents.

Teachers can also be pro-active in supporting a multiple household situation. Parents can be provided with ideas for helping their children in each home, with strategies such as providing designated locations for homework and backpacks or using whiteboards for important messages.

Accessibility – Parental Inclusion

Increase the likelihood of all households being involved by lowering or eliminating the hurdles to inclusion.

In a perfect world, parents who live in separate households would frequently and easily share school information with one another. Sometimes parents who do not live together have difficulty doing this, and despite your best role modeling, may not share or communicate with one another. A structured approach for communicating with both parents at school can de-escalate family conflict.

Some specific strategies include:

- Engage each parent in separate problem-solving sessions about their child's academic issues.
- Be sensitive to financial issues for the child's sake. Check with school counselors and administrators about scholarships or aid for school related activities and events that cost out of pocket money.

- If the child is involved in therapy, get both parents' permission to talk with the therapist.
- If a stepparent's role is a source of conflict, work with both parents and any professionals involved with the family (after getting written consent from both parents) to gain permission to communicate with the stepparent. If this is not possible, communicate only with the parents who have legal custody rights.

By increasing both parents' accessibility to you and your classroom, you reduce the likelihood that your student is going to fall through the cracks of the parents' divided attention. There are several ways you can create and maintain this accessibility. Having already identified the students who have multiple households, you now know which children need multiple copies of announcements. If your classroom system uses folders, some children may need multiple folders, with each folder designated to a specific household.

While many schools still traditionally send home weekly notices, there are an increasing number of teachers and parents who have access to e-mail. Sending class newsletters and notices electronically avoids many of the pitfalls that occur when counting on the child to be sure that notes reach both parents. Be sure to have both electronic mailing addresses in multiple household situations.

Additionally, many teachers post the class newsletter on the Internet so that parents may access it at any time, bypassing potential problems with "spam" filters, as well as workplace rules that may prevent parents from receiving personal emails.

There are times that making your classroom accessible to separated parents will take more time and effort. There will be the child, for example, who spends every other week with Uncle Jessie, the parent with no email, no phone, and those who only talk to the other parent(s) through their attorneys. To increase the opportunity for that student to always have an educationally supportive household, a teacher would have to send notices via snail mail. While this is an extreme situation, many children may require duplicate copies of notes, notices, and grade reports. Requesting a stack of pre-addressed envelopes from the parents can make this task less cumbersome and can help ensure that information is available to all households. Utilizing any electronic tools the teacher has available (e.g. spreadsheets, databases, mailing labels), or putting blank envelopes out at open house to allow parents to "self-address" them the old fashioned way can make this job less of a burden on the teacher.

At times, creating accessibility is as simple as acknowledging the situation. If the parent conference sign up sheet only has one time slot per student, the inference may be that only one household is expected to participate. If the form only provides a place for a telephone number, it will be difficult to collect e-mail addresses. Changing the format of this form may signal the parents of our hope that all parents will participate. This same type of reformatting can be done on many forms including those used for "meet the teacher night," classroom volunteers or "first day" sign-in sheets.

Including All Parents: It May Be the Law!

Most school districts recognize that many divorced or never-married parents continue to share care and custody of their children, and that each parent regardless of their parenting time, unless otherwise prohibited by court order or law, should have equal access to information regarding his/her child's school progress and activities.

In addition, many states have "Open Records" statutes that require school districts to provide parents access to public records in a timely manner. If a school district refuses to comply, the Secretary of State's office is charged with enforcing these laws. In addition, school funding can be impacted by non-compliance.

These factors underscore the importance of making sure that school administrators are aware of all regulations as well as the legal custody status of students' parents.

Advocacy for Students

Decrease the number of hurdles by advocating for the special needs of multiple household students.

In advocating for the needs of multiple household students, there are a number of practices that are fully within the control of the classroom teacher. Other practices may require approval of an administrator prior to implementation. The classroom teacher's efforts will be much simpler if the district's standard registration form includes checkboxes that are labeled, e.g.: " Student has a parent that resides in a different household than registering parent." If the box is checked, that second (or third) parent's contact information is also collected.

These additional contacts will now appear on the teacher's official student roster and the school's mailing list. They will be forwarded to the Parent-Teacher organization for inclusion on its mailing list and included in school directories that are sent home to families. Inclusion in school directories enables other children (or their parents) to easily contact the child at either parent's home for play dates, birthday parties or other opportunities to socialize.

The district might consider a policy stating that all legal parents or guardians must be listed on the emergency contact form, or that they should maintain in the student's file a copy of their parenting schedule for all those living in multiple households.

Advocating for students may include informing other educators and your administration about how these simple changes translate into concrete benefits in the classroom. Administrators also have an interest in identifying students who may have "special custody" situations, which may even restrict a parent's access to the child or to school records. This is an opportunity for the school to gather relevant legal information that is often not provided until a crisis arises.

Advocacy becomes more important as children leave the elementary years and the associated all-day supervision by a single teacher. In middle school, a student may have a designated homeroom teacher, but they may only see them once a day. With the lack of day-long oversight, having documentation of multiple households and policies for multiple copies of report cards could be essential to assisting the student in maintaining their academic achievements across multiple settings.

Ensuring that special activity teachers and coaches are aware of notification policies and options is particularly important in the secondary schools. Extracurricular activities become more important to the student, and student-to-parent communication may diminish during this time. Teachers often have less contact with the parents of older children. Supervisors of extracurricular activities might consider posting scheduling and other information on a Web site and contacting all parents regularly by email. Likewise, permission slips for bus rides, out-of-town trips and the like become very important during this age. Schools and administrators should maintain accurate records regarding who has the legal right to grant these permissions. When systemic safeguards are not in place and this information has not been collected, the final burden for verification may well fall upon a teacher or coach, perhaps while loading a bus of students in a school parking lot as angry parents debate the contents of their divorce decree.

TEACHERS: STAYING OUT OF THE MIDDLE

Avoid being put in the middle, or triangulated, by battling parents.

Most parents will support the other parent's interest in their child's academics. Some may do little to support it but, with a little education and support from the teacher, will not interfere with efforts to involve both parents. There are, however, a small number of parents who are unable to resolve differences in their relationship with the other parent and will attempt to involve the teacher in their disagreements and force him/her to take sides.

Some information about a student's home life, inasmuch as it affects their ability to learn, is necessary. Teachers, however, may at times have to remind parents that their role is as an educator. They may have to insist that they are not a conduit of messages from one parent to the other, have no interest in identifying the "good" or "bad" parent, cannot mediate non-academic disputes, and are not interested in gossiping about any of their students' parents.

To maintain neutrality with parents, and ensure that both parents know it, teachers may need to clarify their boundaries, practice stating them, and even commit them to writing. Unfortunately, on rare occasions, teachers may find themselves in the middle of a multiple household situation despite their best efforts to remain neutral (e.g., an impending divorce where the teacher may be subpoenaed for testimony). If the teacher is concerned that this may be occurring, contact with the school administrator should be

made immediately. The administrator can then provide guidance for the teacher in district legal policies.

Many of these conflicted parents have learned to habitually recruit allies in all of the settings their child's life occupies, but most will be responsive to redirection. Sometimes a simple statement can clarify the boundary, such as "I appreciate your willingness to share with me, but I need to focus on Sally's education and wish to think of all my student's parents in a positive light." When the parent attempting to forge an alliance with the teacher understands that school personnel cannot be recruited, they may retreat with some confidence that school officials will remain neutral. Some parents, however, will not be easily deterred. It is important for teachers to know that they can refer this problem to the school counselor, principal, or some other administrative-level person who has the capacity and a plan for addressing these difficult cases.

It is recommended that when teachers become aware of the existence of these hostile parental relationships, they began to keep a simple log of all contacts (what, when, how they communicated with each parent). In addition to the protection that it may provide the teacher, it also may derail future problems that can arise from misinformation.

Finally, it would be unrealistic not to mention that sometimes there are legitimate and lawful restrictions on a parent's access to the child, the other parent, the school property and/or educational records. In the best of circumstances, this information would have been collected by the administration and passed to the classroom teacher long before the information is needed. If that did not happen, and the classroom teacher is informed by a parent (or student) of these restrictions, the information needs to be immediately passed to the administrator for confirmation.

The school should have copies of any legal documents determining which parent has decision-making responsibility in which areas of the child's life. The educators and administrators in the school should never be put in the position of having to make a determination in these matters.

Documentation must be requested from the family. It is the responsibility of the administrator to determine the legal implications and thus the policies and practices that will govern your interaction with this parent.

- **Educators can become caught up in the parents' conflict if they have not clarified their role. Do not take sides because it is harmful to children of any age!**

Learn how to respond, or to seek help if parents persists in attempts to get you aligned with them. Communicate with both parents. Avoid gossip about any family with the other parents and teachers.

FAMILY COURT PROFESSIONALS: WHO WANTS WHAT FROM YOU?

Interacting with the Legal System

There can be tension between school systems and court systems in addressing issues regarding children of separating and divorcing families. This is unfortunate because, in actuality, court systems are best able to serve the “best interests” of children with the assistance of the information the school system is able to offer.

The hope is that, with this document, you will be in a better position to move beyond an “us” vs. “them” mentality born of mistrust and misunderstanding of the differences in processes between school and court systems. If ever there is a need for collaboration and cooperation to serve children’s best interests, it is now, given the sheer numbers of school-aged children whose families are separating and divorcing or whose parents have never been married. The intent of these explanations is to begin bridging this gap.

At times, educators, principals and counselors may be asked to speak with various professionals who are working with the legal system to help children whose parents are in the midst of a separation or divorce. These individuals may include attorneys or other professionals appointed by the court to represent children in court matters, mental health professionals conducting child custody evaluations, or parenting coordinators whose job it is to facilitate a resolution of conflict between parents as it may relate to their children.

Teachers are most often contacted because they have daily interaction with children and can provide the most comprehensive information about the child’s academic performance as well as about the child’s interactions with peers. Professionals within the family law arena may also ask to speak with guidance counselors or others in the educational system who have ongoing contact with parents and children. If the parents or children have had extensive interaction with the principal of a child’s school, he or she may be contacted to provide information.

Those in the educational arena are often unfamiliar with who these professionals are and who they represent. Educators may be unsure of how to respond to these individuals. The goal here is to clarify the roles of these professionals and to explain how they may use the information you are asked to provide.

Most of the information you will be asked to provide is not confidential. It is important that you maintain neutrality (don’t take either parent’s side or point of view) and give objective observations or data rather than your opinion of each parent’s ability.

Role Definitions and Descriptions

Attorney for the Child or Guardian *ad Litem*. An attorney can be appointed by the Court to represent the best interests of the child and act independently of the attorneys who may represent the child’s parents. Jurisdictions may call this attorney by different names including Guardian *ad Litem*, Minor’s Counsel, the Child’s Attorney, the Child’s

Advocate, a Special Guardian or Law Guardian. In this description the term Guardian *ad Litem* (GAL) will be used.

Although the role played by the GAL may vary (and in some places may be performed by a licensed mental health professional), it is usually the job of the GAL to report to the Court about findings regarding the child. In some jurisdictions the court asks the GAL for very specific recommendations regarding the custody or parenting plan. In others, only the findings are conveyed to the court, and the judge determines the parenting plan.

The GAL depends upon observational and investigative skills to evaluate all aspects of the child's upbringing, including the home situation, the school setting, or any medical and school records. The GAL may interview each of the parents, with or without the child and any siblings present. The GAL is also expected to interview pertinent individuals who have relevant information about the child, and these collateral contacts can include family members, close friends and professionals such as teachers, counselors, therapists, physicians, tutors and coaches.

When interviewing school personnel, the GAL may request information about the child's attendance, academic performance, relationships with teachers and other school personnel, relationships with peers in and outside the classroom, as well as the child's overall adjustment to the school environment. The GAL may also ask about each parent's attendance at teacher-parent meetings or other school events, as well as communication with the teacher.

The GAL may also make recommendations on behalf of the child for special services or resources for the child that may not have been provided and that the GAL believes would be in the child's best interest, e.g., mental health therapy, speech therapy or occupational therapy.

In some jurisdictions, the GAL acts as advocate for the child with the specific role of presenting to the court the child's own "voice" as distinct from making an independent assessment. This presentation may include what particular wishes the child has about a parenting plan for his/her family. Because the child is a minor, having the representation of an attorney or other professional is a means for the child to communicate with the Court when he or she might be reluctant to speak for fear of hurting one parent or the other.

The GAL is appointed to protect the individual interests of the child regardless of the preferences of the parents. It is expected that the GAL will use his or her best skills, knowledge and expertise to conduct a thorough investigation of the parenting issues in order to provide the Court with an objective evaluation of what is in the child's best interest.

Courts often rely very heavily upon the report and recommendations of the Guardian *ad Litem*, particularly when there is no court-appointed custody evaluator involved in the case. The GAL's report may be in writing or provided orally to the Court in a

confidential chamber's conference with the judge and the other attorneys involved, or as testimony in open court. The report of the GAL is often confidential. While it may be disclosed to the attorneys in the case, the parents are often not privy to the GAL report, although a summary or synopsis of the findings may be given to them orally by their attorney.

CASA Volunteer. The mission of the Court Appointed Special Advocate (CASA) is to support and promote court-appointed volunteer advocacy for abused and neglected children so that they can thrive in safe, permanent homes. The movement began in 1977 when a Seattle Superior Court Judge requested community volunteers to speak up for the best interests of children in court.

In order to accomplish this, CASA volunteers are often appointed by the court to conduct independent evaluations to determine if a child's needs are being met. CASA volunteers may spend considerable time understanding a child's situation and are often asked to provide written reports to the court that include recommendations and document the sources of the information on which these recommendations are based. Therefore, in general, comments made to a CASA volunteer cannot be kept confidential.

A CASA volunteer may ask you to give factual information about what you have observed with the child or ask you to comment on educational matters as they relate to a particular child. You may also be asked to comment about your perceptions of the child's relationship with peers, impressions of the child's feelings and thoughts about his situation. This information is used to help the court understand the child's needs. The CASA volunteer serves as an advocate for the child's needs and reports to the appropriate professionals to make sure that the child's emotional and educational needs are being met.

Custody Evaluator. A custody evaluator is a mental health professional who is appointed by the court. Teachers or school administrators may ask an evaluator to provide a copy of the court appointment to confirm this role. A custody evaluator will want to speak with teachers, counselors and other school personnel who have regular contact with a child. This contact provides useful information to the evaluator who is working to help determine the best interests of the child.

The evaluator is neutral and is not asking educators to choose sides in a dispute or to identify one parent as better or worse. Custody disputes are complex. There may be many factors that influence a parent's participation in their child's education, including the ability or willingness of the other parent to include them. A parent's role in their child's education also may or may not be a pivotal factor in any particular custody circumstance. The educator may have little or no knowledge of these other factors. The educator should simply report observations and impressions of the parents in relation to their child's education. The evaluator's job is to weigh the factors.

The evaluator is interested in information pertaining to the performance and development of the child. You might be asked to comment about the child's academic functioning as

well as to report information about the child's relationships with peers. The custody evaluator may also ask about your impressions of each parent's support of the child (i.e., with homework or with following your recommendations to assist the child).

In general, comments made to an evaluator are not confidential. They might appear in a report or be discussed in court appearances or during a review of the evaluator's file. They will be used as data to inform the Court with recommendations offered in the best interests of the children.

The goal of the custody evaluator is to assess the child's needs and recommend to the court the best arrangement, or parenting plan, for that child so each parent will be able to provide the child with what she or he needs. The custody evaluator will consider your information, as well as information he or she has gathered from multiple other sources and incorporate it into a big picture. The information you provide will likely be included in a comprehensive report provided to the court, and the parents may have access to your report. The court will use that information to help with decisions about the child's parenting schedule.

Parenting Coordinator. Parenting coordinators (PCs) are either appointed by the court or retained by agreement to assist parents in designing and/or executing their parenting plan. Their title may vary by location; they are also called parenting facilitators, special masters and wisepersons.

The authority granted to them by the Court or by the parents agreeing to the PC also varies a great deal. Sometimes the court or parents define the Parenting Coordinator's role as one who suggests to the parents how they can act in their child's best interest; other courts or parents grant the authority to the PC to make decisions with respect to implementation of the parenting plan as authorized by the Court and to break any impasses between parents.

The PC may ask you to provide facts relevant to a child's academic performance, or ask you questions that require you to provide a recommendation based on your training and experience as an educator.

A Parenting Coordinator is neutral and acts in the best interests of the child. The PC is not asking you to choose sides, criticize, or to recommend either parent. Whether or not your comments to the PC are confidential depends upon the jurisdiction and the topic at hand. The PC should inform you about confidentiality in your jurisdiction.

The Parenting Coordinator will use the information you provide to help the PC guide parents to make effective decisions for their children, or to make the decisions for them. For example, if the parents are having a dispute about whether to place their child in special education classes, a teacher's input is important to determine the child's educational needs.

Summary

Teachers are most often contacted by individuals from the family court system because they have daily interaction with children and can provide the most comprehensive information about the child's academic performance as well as about the child's interactions with peers.

- It is important to remember that the court-appointed Guardian *ad Litem*, the CASA volunteer, the custody evaluator and the parenting coordinator, whether appointed by the court or agreed upon by the parents, are neutral professionals. Each is working toward what is best for the children involved. None should ask an educator to choose a side or to pick the better parent. The educator should simply be asked to report their observations and impressions of the parents in relation to their child's education and of the child's adjustment and progress in school.
- In general, comments made to a GAL, CASA volunteer, a custody evaluator or a parenting coordinator by an educator are not confidential. They may be used along with other data to inform the court with recommendations offered in the best interests of the children, or to assist parents with the best implementation of their parenting plan.

REQUESTS FOR INFORMATION

Each state has its own rules regarding court procedures such as subpoenas, business records, evidentiary rules, discovery rules and enforcement mechanisms. There may be state laws that govern how you proceed. Many school districts have policies on how to respond to requests to participate in processes for children involved in separation and divorce. This may address how to respond to a subpoena, access to school records, how to convey information about the child's behavioral and academic progress and how to provide other relevant information to the court system.

The most important consideration in developing and updating these policies is assuring that the authorized parent(s) have consented to the disclosure of requested information. You can determine who is authorized by requesting the legal documents specifying the rights and duties of each parental party. It may be easier and more effective to simply require the consent of both parents prior to any disclosure of information.

Receiving a subpoena may initially cause some alarm for school personnel and, if there is no established policy, consultation with the school's attorney is recommended. Since these requests for information may involve polarized family conflicts, school personnel should be cautious about the release of information.

School personnel often have information that has significant bearing upon the child's current welfare so their input is vital for the best interests of the child to be served. If

educators are asked for information about the child, it is appropriate for the school to ask for information regarding the nature of the case, for copies of court orders in effect, the names and scope of responsibility for court-appointed personnel and a specific outline for what information is requested.

Educators may be reluctant to testify in a court of law because of the time and expense involved, or fear of liability or retribution from parents. These are valid concerns, however, your assistance may be an important factor in helping to determine the most effective outcome for the child in question.

Authorization for Disclosure

Schools should have minimum standards about what is required in a request for disclosure. In the United States, the **Family Educational Rights and Privacy Act (FERPA) (34 CFR99.30)** sets a minimum standard. An acceptable consent:

- specifies the records to be disclosed;
- states the purpose of the disclosure;
- identifies the party or class of parties to whom disclosure may be made; and
- is signed and dated by the authorized parent(s).

Appendix D provides a sample Authorization Release of Information form.

If your school is developing a disclosure policy, you may wish to look beyond that minimum and include some additional components required in the United States when disclosing health care information (HIPAA). For example:

- the relationship between the signer and the student whose records are being disclosed;
- an attestation of the signer's right to sign for the student; and
- the date or event upon which the consent will expire (e.g. the end of the current school year).

These lists are not exhaustive and you may identify other criteria that you wish to require. However you proceed, having these policies in place prior to receiving a request for disclosure of information makes everyone's job easier. School personnel may then provide the court with the valuable information that they possess, knowing they have taken appropriate steps to safeguard the rights of the student and their family.

THE BIGGER PICTURE

Family Law Legislation

Family law legislation establishes the principles of law that apply to separating and divorcing families. Depending on the jurisdiction, the governing law can be state

legislation, federal statutes, or both. The rights and obligations of the parties may be governed by a court order or a private agreement of the parties.

In most jurisdictions the legislation provides for the following:

- During separation or divorce, parents can agree about the care and upbringing of the child. When there is a dispute between the parents, a court may order each parent's responsibilities for the care and control of the child. This order is binding upon the parents.
- Parenting plans may be established that describe arrangements for how these responsibilities are divided based on the best interests of the child.

Federal Statutes

In the United States, applicable federal statutes are few, but important. The first is the **Parental Kidnapping Prevention Act (PKPA)**. This act empowers federal law enforcement agencies to locate and apprehend parents who “child-snatch.” This may involve a case where an out-of-state parent refuses to return the child to the custodial parent at the end his/her parenting time. It may involve a case in which a parent deliberately absconds with a child, crosses state lines and then secretes the child in order to “avenge” a court’s decision on custody to the other parent, or to seek revenge against the custodial parent for issues that arose during the marriage or divorce. These situations can be terrifying for the child and can place the child in grave danger.

In the event that an out-of-state parent shows up at a school and asks to take the child, school personnel should take every precaution to secure the identity of the parent. The parent should provide a copy of any relevant court orders on file. School personnel need to know the identity of the custodial parent and what parenting time rights, if any, the non-custodial parent has. The school is not required to act as a law enforcement agency; however, school personnel should be aware of the federal law that prevents the kidnapping of children so that, in the rare case of a kidnapping, federal authorities (including the FBI, U.S. Marshal’s office or the U.S. Attorney) should be contacted immediately.

A second Act, adopted in at least 46 states in the U.S., is called the **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**. This law provides a uniform system for determining the jurisdiction for child custody actions when there is a dispute between parents who reside in different states. In our highly mobile society, it is not unusual for children from one state to relocate with one parent to another. The UCCJEA gives jurisdiction in child custody matters to the child’s “home” state and defines it as where the child has resided with her parent for six consecutive months prior to the commencement of legal proceedings. If the child has resided somewhere for less than six months, the Court in the state where she has “significant connections” can claim jurisdiction.

Accordingly, school districts may be requested to provide information to a foreign court (outside of the state) for purposes of making legal determinations such as modification of custody and parenting time, child support or protection from abuse orders.

Finally, the **Uniform Interstate Family Support Enforcement Act (UIFSA)** is the uniform law that expedites child support collections across state lines. It is unlikely that a school would be involved in child support issues unless financial matters such as tuition, books or activity fees are a consideration.

Special Needs

The Federal Department of Education has administrative regulations that govern the rights of parents and children with special needs, and their right to obtain an IEP, an Individualized Educational Plan. There may be additional challenges in cases of separation and divorce to ensure that a special needs child's educational and emotional needs are addressed. The support and involvement of both parents will likely provide benefits to the child.

State Statutes

On a state level in the United States, there are statutes that specifically address the myriad considerations that impact children involved in the separation and divorce of their families. It would be prudent for each school district to maintain a copy of the relevant family law code.

GLOSSARY OF BASIC FAMILY LAW TERMS

Best Interests of the Child

In most jurisdictions, when making decisions involving children, a court makes its decision based on the best interests of the child.

Legislation may define factors for the court to consider when determining best interests. This list, while not exhaustive, identifies some of the considerations:

- The love, affection and emotional ties between the child and the parent
- The wishes and preferences of the child, taking into consideration the age and maturity of the child
- The ability and willingness of each parent to provide the child with guidance, education and the necessities of life and any special needs of the child
- The length of time the child has lived in a stable home environment
- The plan proposed for the care and upbringing of the child
- The effect on the child of any separation from a parent or other person
- The practical difficulty and cost of the child having contact with a parent
- The ability of each parent to care for the child

- The age, sex and cultural backgrounds of the child
- The need to protect the child from any physical or psychological harm, abuse or violence
- The attitude of the parents toward the child and to their parenting responsibilities
- Any violence or court order addressing violence in the family
- Any other factors the court thinks relevant

Child Support

Both parents are responsible for the financial support of the child. Following divorce, this may result in child support payments from one parent to another. The general principles in settling financial disputes are also based on state and/or federal legislation, but the ultimate financial arrangements required by each parent will be established by the court.

Custody

Traditionally, the terms custody and visitation have been used to describe separating and divorcing family situations to delineate the parent who has the majority of the care and control of the children. In recent years, new language has evolved in an effort to more accurately describe the rights, responsibilities and privileges of parents and children, including terms such as primary residential parent and non-residential parent. Terms may vary based on statutory language.

A parent's time with his or her children is now more commonly referred to as parenting time rather than visitation. The amount of time a child spends with each parent is called a parenting schedule.

Custody Arrangements

These definitions describe different combinations of residential living arrangements of the children and decision-making responsibility of the parents. The actual meaning of these terms can vary state by state, depending on legislation and case law.

Sole legal custody usually means that one parent has the final decision-making responsibility for the child and is called the custodial parent. The custodial parent may, however, consult with the non-custodial parent. Usually, the court order will ensure that the child has ongoing contact or parenting time with the non-custodial parent. Sole legal custody, however, implies primary physical custody.

Joint legal custody usually means that parents jointly make major decisions in a child's life. These decisions may include choices about the child's education or medical decisions. Daily decisions, such as bedtime, or what the child will wear, are made by the parent who is with the child at the time.

Primary physical custody means that regardless of legal custody, one parent is designated as the parent with whom the child will live most of the time. This does not necessarily mean that the other parent is unqualified or incompetent in any way.

Joint physical custody means that a child shares significant time with both parents. Although no specific amount of time is specified, it is not unusual for this term to be used in parenting arrangements where a child spends at least 30 percent of the time with each parent. Joint physical custody *does not* necessarily require a child to live half the time with one parent and half the time with the other.

Third party custody has become more common in recent years. This may be custody granted to grandparents or other family members such as an aunt, uncle or older sibling. When neither parent is able, for whatever reason, to take custody of the child, then custody may be awarded to another family member or to a legal guardian. A legal guardian is an individual appointed to provide all of the care, education and support as well as the decision-making authority for the child when the parents are unable to do so or have voluntarily relinquished custody. Guardianship is a relationship that may not be permanent, but it exists over a period of time until the parents of the child can resume custody. Sometimes a guardian is appointed because the parents are minors themselves.

Custody Evaluation

A custody evaluation is a process in which an independent mental health professional conducts an assessment and/or investigation of the family and prepares a report for the Court. The information provided is used to inform the decision-making process regarding custodial arrangements for children in a family law proceeding. The evaluation may include personal interviews and observations with parents and children, psychological testing, reviewing school and medical records, recording impressions about the family from collateral sources of information, including extended family members, people from the community and educators.

Deposition

A deposition is a part of a legal proceeding that occurs outside the court room, typically in an attorney's office. Attorneys representing one or both parties in litigation can ask questions of the deponent who is the party upon whom a notice or subpoena of deposition has been served. Questions are asked about issues relevant to a pending legal proceeding. Sometimes deposition testimony may be used in lieu of testimony at Court under appropriate circumstances where the deponent is unavailable or cannot testify.

Home Study

A court-ordered home study is similar to a custody evaluation but does not require as extensive data gathering. It is often performed by someone on the staff of the Court service agency or by a social worker who is affiliated with the Court. Some custody evaluators perform home studies as part of a more comprehensive evaluation.

Paternity

It is not unusual for a school-aged child to be the product of an unmarried couple. Each state has a separate set of governing rules in paternity situations, and a paternity suit is a legal proceeding to determine the biological paternity of the child. Biological mothers may initiate a suit for the purpose of obtaining child support; biological fathers may initiate a suit to have access to the child for parenting time.

Subpoena

A subpoena is a writ (document) commanding a person to appear before a court or other tribunal. A person who receives a subpoena must comply or be subject to a penalty for failure to comply. A subpoena may also be issued for a particular school or school district to obtain the records of a child who is in attendance. If there is a reason for objection to releasing the records, that objection needs to be formally made in a court proceeding through an attorney for the school district.

Recorded Statement

Similar to a deposition, a recorded statement is given under oath before a court reporter for the purpose of preserving information to be used later at trial. Agreement of the attorneys is necessary for a recorded statement to be used in Court in lieu of an individual's presence in Court.

APPENDIX A

Children's Bill of Rights in Divorce

Children have:

- The right to be treated as an interested and affected person and not as a pawn or possession
- The right to love each parent, without feeling guilt, pressure or rejection
- The right to love, care, discipline and protection from both parents
- The right to not choose sides or be asked to decide where they want to live
- The right to express their feelings about the divorce, such as anger, sadness or fear
- The right to a positive and constructive on-going relationship with each parent
- The right not to make adult decisions
- The right to remain a child, without being asked to take on parental responsibilities or be an adult companion or friend to parents
- The right to the most adequate level of economic support that can be provided by the best efforts of both parents
- The right to not participate in the painful games parents play to hurt each other or be put in the middle of their battles

Adapted from decision of the Wisconsin Supreme Court

APPENDIX B

10 WAYS TO HELP YOUR CHILDREN DURING DIVORCE

1. Show your children that you still love them.

Spend time with them; show them affection; be ready and willing to listen when they want to share their feelings with you.

2. Encourage your children to respect and love their other parent.

Give your children permission to love their other parent. Don't talk negatively about your ex to your children. Share positive memories of your married life.

3. Don't burden your children with adult problems.

Although your children may have to assume extra responsibilities around the house after the divorce, never forget that they aren't adults yet. Be careful not to burden them with your financial or emotional worries – this is too scary for them. Assure them that no matter what, everything will be okay.

4. Try to agree with your ex on the basics.

If you and your former spouse are sharing custody, try to agree on curfews, disciplines, and grades. However, if you decide on different rules, don't complain about it to your children or argue with your spouse unless his/her parenting style is clearly doing emotional or physical harm to your children.

5. Make your children feel at home in your new place.

Allow children to help you decorate and create a space that is all their own within your new home. Maintain a supply of toiletries, clothes, and toys at each residence.

6. Avoid manipulation.

Avoid arguing with your former spouse in front of your children, using your children as go-betweens if you are fighting with your ex, or trying to prevent your ex from seeing your children.

7. Keep your promises.

Keeping agreed upon visits and/or phone call times will help children feel their lives are more predictable. Give as much notice as possible if you need to change your plans.

8. Wait to date.

Avoid bringing home dates before or right after your divorce is final. Wait until you are dating someone regularly to introduce them to your children because children can become emotionally attached to new parent figures and suffer if the relationships end.

9. Make your children's lives stable and predictable.

Maintain as many routines, rules, and traditions as you can. Serve meals at the same time, do homework at the same time, maintain the same standards for discipline.

10. Avoid the "Super Parent" syndrome.

If you feel guilty about the effect of the divorce on the children or competitive with their other parent, don't try to compensate for these feelings by lavishing the children with gifts, trips, money or by becoming over-protective.

Adapted from DIVORCE FOR DUMMIES (1998)

APPENDIX C

Suggested Readings (and other Resources) on Divorce

An Internet search for books on parenting or divorce will reveal thousands of books. Here are a few books and a Web site that have been helpful to many to get you started on creating your own bibliography.

Lesson Plan For Teachers

Lesson Plan for Grade Levels 6-8, Separation and Divorce Education:
isolinaricci.com/lessonplans.htm

Books For Parents

Ackerman, Marc J. *Does Wednesday Mean Mom's House or Dad's? Parenting Together while Living Apart.* Wiley and Sons, 2008.

Ahrons, Constance. *The Good Divorce.* Harper Collins, 1998.

Blackstone-Ford, Jann and Jupe, Sharyl. *Ex-Etiquette for Parents: Good Behavior After a Divorce or Separation.* Chicago Review Press, Inc., 2004.

Coates, Christine and LaCrosse, E. Robert. *Learning from Divorce: How to Take Responsibility, Stop the Blame and Move On.* John Wiley & Sons, Inc, 2003.

Emery, Robert E. *The Truth about Children and Divorce: Dealing With the Emotions So You and Your Children Can Thrive.* Penguin Group, 2006.

Hetherington, E. Mavis and Kelly, John. *For Better or For Worse: Divorce Reconsidered.* W.W. Norton & Co., Inc., 2003.

Lansky, Vicki. *Vicki Lansky's Divorce Book for Parents: Helping Your Children Cope with Divorce and its Aftermath.* Book Peddlers, 1996.

Newman, George. *101 Ways to be a Long-Distance Super-Dad ... or Mom, Too.* Robert D. Reed, 2006.

Ricci, Isolina. *Mom's House, Dad's House: A Complete Guide for Parents Who Are Separated, Divorced or Remarried.* Simon and Schuster, 2006.

Ross, Julie and Corcoran, Judy. *Joint Custody With A Jerk: Raising a Child With An Uncooperative Ex.* St. Martin's Press, 1996.

Stahl, Philip, M. *Parenting After Divorce: Resolving Conflicts and Meeting Your Children's Needs*. Impact Publishers, Inc., 2007.

Ury, William. *Getting Past No*. Bantam Books, 1993.

Wittmann, Jeffrey P., *Custody Chaos, Personal Peace: Sharing Custody with an Ex Who Drives You Crazy*. Penguin Group. 2001.

Books For Children:

Age 4-8

Girard, Linda W. *At Daddy's on Saturdays*. Whitman and Company, 1991.

Hickey, Elizabeth & Cohen, James. *I Love You More Than...* Family Connections, 1998.

Lansky, Vicki. *It's Not Your Fault, Koko Bear*. Book Peddlers, 1997.

Levins, Sandra. *Was It The Chocolate Pudding: A Story for Little Kids about Divorce*. American Psychological Association, 2006.

Lindsay, Warren Jeane. *Do I Have a Daddy? A Story about a Single Parent Child*. Morning Glory Press, 2000.

Masurel, Claire. *Two Homes*. Candlewick Press, 2003.

Moore-Mallinos, Jennifer. *Daddy's Getting Married*. Barron's Educational Series, Inc., 2006.

Moore-Mallinos, Jennifer. *When My Parents Forgot How to be Friends*. Barron's Educational Series, Inc., 2005.

Ransom, Jeanie Franz, and Finney, Kathryn Kunz. *I Don't Want To Talk About It*. American Psychological Association, 2000.

Schmitz, Tamara. *Standing on my Own Two Feet: A Child's Affirmation of Love in the Midst of Divorce*. Penguin Group, 2008.

Age 9-12

Blume, Judy. *It's Not the End of the World*. Random House. 1986.

Danzinger, Paula. *Amber Brown Goes Fourth*. Penguin, 2007.

Ricci Isolina. *Mom's House, Dad's House for Kids*. 2006.

Thomas, Shirley. *Divorced But Still My Parents: A Helping Book About Divorce For Children and Parents*. Springboard Publications, 1997.

Winchester, Kent and Beyer, Roberta. *What in the World Do You Do When Your Parents Divorce: A Survival Guide for Kids*. Free Spirit Publishing, Inc., 2001.

Teens

Block, Joel D. and Bartell, Susan. *Stepliving for Teens: Getting Along with Stepparents and Siblings*. Penguin Young Readers Group, 2001.

Joselow, Beth B. *When Divorce Hits Home: Keeping Yourself Together When Your Family Comes Apart*. iUniverse, Inc., 2000.

MacGregor, Cynthia. *The Divorce Helpbook for Teens*. Impact Publishers, 2004.

Stern, Zoe and Evan. *Divorce is Not the End of the World*. Ten Speed Press, 2008.

Book for Stepfamilies

Einstein, Elizabeth and Albert, Linda. *Strengthening Your Stepfamily*. Impact Publishers, 2005.

Lofas, Jeannette. *Family Rules: Helping Stepfamilies and Stepparents Build Happy Homes*. Kensington Publishing Corp., 1998.

Pickhardt, Carl E. *Keys to Successful Stepfathering*. Barron's Educational Series, Inc., 1997.

Visher, Emily B. and Visher, John S. *How to Win as a Stepfamily*. Taylor & Francis, Inc., 1991

Wisdom, Susan and Green, Jennifer. *Stepcoupling: Creating and Sustaining a Strong Marriage in Today's Blended Family*. Crown Publishing Group, 2002.

APPENDIX D

Sample Authorization Release of information

RESTRICTED TO THE FOLLOWING:

(Should be directed to the individual in the school or school district who maintains such records as requested.)

This will authorize you to release any and all information in your care, custody and control concerning (name of child or children) of (city and state of child's residence), to (name of custody evaluator, attorney or Court seeking information) of (name of city, and state or identification of Court [circuit or district]), and their representatives, to read and copy or obtain copies of any records concerning the academic and educational records, including achievement and other tests results, reports of teachers' observations, and all other school or special education documents. You are not authorized to release copies of this information to other individuals or entities except as specifically provided herein.

You are not authorized to discuss this matter in any general manner.

The information will be used/disclosed for the following purposes: (i.e. in connection with legal proceedings pending in the _____ Court of the State of _____, or in connection with a custody evaluation or home study being performed by _____). I understand and agree that this Authorization will be valid and in effect until (date or event upon which the Authorization expires) or *until revoked*.

It is expressly agreed that a photocopy of this authorization shall be valid as an original. Dated this _____ day of _____, 200____.

JANE DOE A Mother _____

JOHN DOE A Father _____

APPENDIX E

BASIC CANADIAN FAMILY LAW

I. Custody & Access in Canada: An Inter-Jurisdictional Overview

Schools

Schools play a vital role in the lives of children when they are subject to court Orders governing their custody and access. Schools work in partnership with parents to ensure that the children's needs – academic, physical, and emotional – are looked after.

The legal distinction between custody and access is significant. Schools must stay abreast of the legal status of the child which may have important implications for the child within the school setting.

The custodial parent is the party who has legal care and control of the child and holds the decision-making authority. Where parents share custody in a joint arrangement, they share in the important decisions about how the children are raised and may take turns having the children live with them. The decision-making roles and obligations of the parents and the living arrangements for the child are often defined by a legal agreement or by a court order.

The access parent does not have custody and, therefore, lacks the legal decision-making authority of the custodial parent. Instead, the access parent will usually have rights to visit with the children at set times as well as limited rights to inquire about the children. These, too, are often defined by a legal agreement or by a court order.

To that end, school officials and teachers must be able to accurately identify who the responsible adults are in the life of the student, particularly in the event of an emergency. Schools must know definitively which parent or adult is the legal decision-maker. Schools must also be aware of the children's residence, or in the case of joint custody, residences.

In cases where custody and access is in dispute or in flux, schools must take precautions to ensure that the safety and security of the child is not jeopardized through mistaken assumptions or error. In cases where one parent violates Court Orders governing custody and access or where restraining orders against a parent are in effect, schools may be asked to assist the custodial parent through increased vigilance and information-sharing.

Division of Powers

In Canada both the Federal and Provincial/Territorial governments have legislative powers that govern the family. The arrangement is a complex one that has evolved over the years.

The federal Parliament has the constitutional jurisdiction over divorce. While most family law is within provincial jurisdiction, the *Constitution Act*, 1867, by s. 91(26),

allocates to the federal Parliament the power to make laws in relation to “marriage and divorce.” In granting a divorce the Court can at the request of one or both parties deal with custody and access.

The provinces and the territories have power over family law from the expansive phrase in the *Constitution Act*, 1867, s. 92(13), “property and civil rights.” It encompasses property and contract law and other private-relations. This includes the right for the Court under provincial/territorial legislation to deal with matrimonial property, succession, support of spouses and children, adoption, guardianship, custody, legitimacy, affiliation and names.

The federal *Divorce Act*, R.S.C. 1985, c.3, directs the courts to determine matters relating to custody and access on the sole basis of what is in the “best interests” of the child. Under s.16(8) of the *Divorce Act*, the Court is directed to take into consideration the best interests of the child of the marriage. It is determined by reference to the condition, means, needs and other circumstances of the child. Provincial statutes work in tandem with the *Divorce Act* to develop specific arrangements for children that are in their “best interests” e.g., in the province of Ontario, the Ontario *Children's Law Reform Act*, R.S.O. 1990, c.C.

In Ontario, the criteria that the Court is to consider in determining the best interests of a child are set out in section 24(2) of the *Children's Law Reform Act*. S.24(2)(c) includes “the length of time the child has lived in a stable home environment” among other “best interest” factors. In determining what constitutes a favorable *status quo* under this heading, the courts have found a child’s educational placement and adjustment to school to be important considerations.

Set below is an overview of the various custody and access regimes that exist across Canada. It is important to note that a parent’s ability to provide the child with an education constitute one of the factors that Courts will consider in determining what is in the “best interests” of the child.

Custody

Throughout Canada, the primary considerations for deciding custody of children are the child’s welfare and what is in the child’s best interests. Provinces differ in the terminology employed in the child welfare statutes; however, the statutes are consistent in their philosophy and concern for the child and his/her needs.

In British Columbia, Manitoba, New Brunswick, Newfoundland, Ontario, Prince Edward Island, Saskatchewan, and Yukon, the prime criterion in deciding custody is the "best interests of the child."

Other jurisdictions use similar concepts: Quebec, the "child's interest", Alberta, "the welfare of the minor", Northwest Territories and Nova Scotia, "the welfare of the child."

In Alberta, the main statute dealing with custody and access, the *Domestic Relations Act, R.S.A. 1980*, c. D-37, does not refer to the "best interests of the child." However, s. 32(1) of the *Provincial Court Act, R.S.A. 1980*, c. P-20, as amended, provides that if there is a dispute as to the custody of a child, the court may make an order having regard to the best interests of the child.

In Quebec, the principle in determining custody is "the child's interests and the respect of his rights." In addition to giving consideration to the moral, intellectual, emotional and material needs of the child, the child's age, health, personality and family environment, and other aspects of his situation are also taken into account.

In each jurisdiction where "best interests" is the main test, factors are set out to assist the courts in determining what that means. These are:

- The health and emotional well-being of the child including any special care and treatment (British Columbia, New Brunswick, Saskatchewan);
- The views of the child (British Columbia, Manitoba, Newfoundland, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan, Yukon);
- The love, affection and similar ties that exist between the child and other persons (British Columbia, New Brunswick, Newfoundland, Ontario, Saskatchewan);
- The time the child has lived in a stable environment (Newfoundland, Ontario, Yukon);
- The ability of each person applying for custody of the child to provide guidance and education, the necessities of life and the special needs of the child (Newfoundland, Ontario, Yukon);
- Plans proposed for the care and upbringing of the child (Ontario, Newfoundland, Yukon);
- The relationship by blood or through an adoption order between the child and each party to the application (Newfoundland, Ontario, Prince Edward Island);
- The permanence and stability of the family unit with which it is proposed that the child will live (Ontario, Prince Edward Island, Yukon); and
- The willingness to facilitate contact of the child with the other parent (Saskatchewan, Yukon).

Some specific factors uniquely set out in some jurisdictions are these:

- Education and training for the child (British Columbia)
- The capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise these rights and duties adequately (British Columbia)
- The need to provide a secure environment that would permit the child to become a useful and productive member of society through the achievement of his full potential according to his individual capacity (New Brunswick)
- The child's cultural and religious heritage (New Brunswick);
- The permanence and stability of the family unit with which it is proposed that the child will live (Ontario); and

- The personality, character and emotional needs of the child (Saskatchewan).

There are also factors unique to some jurisdictions that are not to be considered, such as:

- The conduct of the parents (Alberta, Ontario, Saskatchewan)
- No presumption and no inference as between parents that one parent should be preferred over the other one on the basis of the person's status as a father or mother (Saskatchewan)

Access

Access is also determined on the basis of best interests of the child in those jurisdictions where that criterion is the main test for custody.

In Saskatchewan, when determining whether to grant access, the court is directed to consider the capacity of the person seeking access to care for the child when the child is in his or her care. Saskatchewan also eliminates several factors considered in custody applications, such as: the physical, psychological, social and economic needs of the child; the capacity of the person seeking custody to act as legal custodian of the child; the home environment proposed for the child; the plans the person seeking custody has for the future of the child.

Enforcement of Custody

Where the Court is asked to enforce a court order, the legislation provides remedies. Custody enforcement options to some degree vary from one jurisdiction to another. The Court can also impose specific terms when granting custody. Some of the available options include:

- Fines
- Imprisonment
- Order that where a child is unlawfully withheld, a peace officer may enter and search any place there are grounds for believing the child to be
- Order that a person must not enter premises where the child resides from time to time including premises the person owns or to which the person has a right of possession
- Restraining order not to molest, annoy or harass the applicant or the child
- Access to information to enforce a custody order
- Order to prevent the removal of a child from the jurisdiction which may include additional conditions such as: transferring specific property to a trustee, making payments to a trustee, posting a bond, delivering the person's passport, the child's passport and other travel documents
- Contempt
- Order to return a child who has been wrongfully removed to or retained in the jurisdiction
- Order that prior to changing the child's place of residence, the custodial parent provide any person granted access with at least 30 days notice of the change, the time at which the change will be made and the new place of residence

- Ancillary procedures to ensure compliance with custody orders, including recognizance, reporting to a designated person, delivery of documents to a designated person, and transfer of specific property to a trustee
- Other options as set out in Provincial rules of civil procedure

Enforcement of Access

In the same way access enforcement options vary from one jurisdiction to another, the court can also impose terms of access. Some of the available options include:

- Fines
- Imprisonment
- Order to direct a law enforcement officer to apprehend and deliver a child to the person entitled to access
- Contempt
- Access to information to locate a child
- Order to prevent the removal of a child from the jurisdiction which may include additional conditions such as: transferring specific property to a trustee, making payments to a trustee, posting a bond, delivering the person's passport, the child's passport and other travel documents
- Restraining order
- Ancillary powers such as ordering a person to enter into a recognizance, report to the court or other named official, and/or deliver up such documents as the court thinks fit
- Other sanctions for flagrant violators of the courts' orders
- Compensatory access
- Reimbursement of applicant for reasonable expenses actually incurred as the result of the wrongful denial of access
- Referral of the parties to mediation
- Order the supervision of access
- Making or varying a custody order or access order
- Requiring the respondent to give security for the performance of the obligation to give the applicant access to the child
- Court Ordered Assessment Report
- Order to attend an educational seminar, parenting course, counseling

In some jurisdictions there are also provisions for failure to exercise access, such as:

- Reimbursement of the applicant for reasonable expenses incurred as a result of the failure to exercise the right to access or to return the child
- The appointment of a mediator
- Requiring the respondent to give security for the performance of the obligation to exercise the right of access, or return the child as the order or agreement requires
- Requiring the respondent to provide his or her address and telephone number to the applicant
- Making or varying a custody or access order

- Court ordered Assessment Report
- Order the supervision of access
- Order to attend an educational seminar, parenting course, counseling

Only a few jurisdictions provide sanctions for failure to exercise access. While courts generally consider that child support and access should not be linked, where a parent denies access, the courts will occasionally suspend child support until access is granted.

II. The Crime of Parental Abduction in Canada

Federal Statutes

Whether or not there is a Canadian court order of custody, if one parent takes or keeps a child under 14 years of age away from the other parent without the other's consent, he or she may be charged with parental child abduction under the *Criminal Code of Canada*, sections 282-283.

The consent of the Attorney General or counsel instructed by him for that purpose must be given before a parental child abduction charge can be laid where there is no Canadian custody order.

There are a number of situations where a charge of abduction may be laid, even if there is no Canadian custody order:

- The parents and child have been living together and suddenly one parent takes the child out of province without the other's consent, intending to deprive the other of his or her rights as a parent.
- The parents are separated and previously agreed that their child will live with one of them. Unless the parent who has been living with the child consents, the other parent cannot later decide to keep or take the child away, unless they get a court order.
- There is a foreign custody order not being complied with.

Where the court has ordered one parent have custody of a child and the other parent takes away or keeps the child without the custodial parent's consent, that parent may be charged with abduction. A charge may also be laid if one parent with joint custody under an order takes away or keeps the child without the consent of the other joint custodial parent.

A parent charged with abduction might have a defense to the charge if the action was taken to protect the child or the parent from immediate danger, or if the other parent agreed he or she could take or keep the child. It is not a defense to a charge of parental child abduction if the child wanted to go or stay with the abducting parent.

Where an abduction charge is laid, a Canada-wide warrant may be issued for the arrest of the abducting parent. This means the parent can be arrested anywhere in Canada and

returned to the jurisdiction where the child resides to face the criminal charge. If convicted of the charge of parental child abduction, a parent may be imprisoned for up to 10 years.

Provincial Statutes

Through the operation of provincial statutes, the Courts may also address the issue of intra-provincial and extra-provincial parental abduction. In Ontario, for example, the *Children's Law Reform Act*, R.S.O. 1990, c. 12 contains the following provisions:

Section 36: Unlawfully withholding a child

- The court may issue an order to apprehend a child being unlawfully withheld from a person in whose favour an order has been made for custody or access, and may order the police to locate, apprehend and deliver the child to the person named in the order.

Section 37: Unlawful removal of child from Ontario

- Where the court is satisfied that a person entitled to access to a child proposes to remove the child from Ontario and is not likely to return, the court may make an order requiring the person to transfer property or payments for the support of a child to a named trustee, post a bond, or deliver the person's or the child's passport to the court or to an individual named by the court.

Sections 40-46: Extra-provincial Matters

- The court may recognize and enforce a custody or access order made by an extra-provincial tribunal, but may supercede the order where the child habitually resides in Ontario and there has been a material change in circumstances since the time the order was made.

International Law

It is important to note that the *Convention on Civil Aspects of International Child Abduction (The Hague Convention)* is in force in Ontario as of December 1, 1983.

Schools as Abduction Sites

Schools are frequently the site of the abduction. Schools therefore need to be informed of any Court orders which may apply to a child in their care. According to the Canadian Police Information Centre (CPIC) 2005 children were reported missing as follows:

32% of the children went missing from their family residence while 14% went missing from child care and 21% from foster care. **26% went missing from institutions, including school, detention and youth centers** and those reports classified as "other" institutions. Less than 1% of children went missing from a shopping mall, place of work, or while on a vacation. M. Daley, Ph.D., *2005 Missing Children Reference Report*, National Missing Children Services, National Police Services, Royal Canadian Mounted Police: Online: <http://www.ourmissingchildren.gc.ca> (Page updated: 2006-05-24).