

LEGAL and GOVERNANCE CORNER

Background:

The public education system is one of the most complex systems that we have in British Columbia and with good reason. Parents are expected to release their children to the District to be educated to become good citizens. Therefore, we require a robust legal and policy framework to ensure trust in this endeavor. While the School Act affects us everyday there is an abundance of other legislation that also impacts us, often in ways we do not expect. That is why when COVID19 is over, please remember to give new principals a handshake and/or pat on the back and/or hug. I intend to address a few areas of law impacting schools that we may note consider. This week is family law.

The Family Law Act

The Family Law Act typically governs family breakdowns in BC (the Divorce Act may apply but is less typical). The Family Law sets out the framework for the rights of parent in a separation. For instance, it sets out who is a guardian, when a guardian has time with a student, who makes the decisions with respect to a student. How does this impact us? Well, it can have major impacts on the decision of a school with respect to a child. Often, there is a valid court order in place that addresses these rights. Unfortunately, even where there is a court order principals and the District are called upon to make decisions where parents disagree. More problematic is when there is no court order.

Important Concepts in the Act

Guardian – Typically, the parents unless otherwise ordered by a court

Parenting Time – When a guardian has time with a child (similar to the concept of custody)

Parenting Responsibilities - The batch of responsibilities that the guardians have with respect to the child (typically without a court order they are even)

Issues

1. Q. Mom wants to move a child from one school to another. Dad does not. What do we do?
 - A. In these circumstances, without a court order that says mom gets to make this decision, the District is in a difficult position because no parent has ultimate authority. Typically, the child would stay put until a court order stated otherwise.

2. Q. It is dad's parenting time day and he would like his new girlfriend to pick up the student. Mom states that she will pick up and does not agree that the girlfriend should. What do we do?
 - A. As both mom and dad are guardians of the child they are assumed to both have parenting responsibilities unless a court order says otherwise. Therefore, dad is able to assert the day to day decision making authority on his parenting time days. Mom is able to assert the day to day decision making authority on her parenting time days. Therefore, mom cannot pick up and the new girlfriend can (unless there is a court order to the contrary). (Note that big decisions will likely involve both parents involvement such as enrollment, psych-ed assessment depending on the age of the child etc.)



3. Q. Grandma is not the guardian but the student lives with her. Dad moves back into town but the student continues to live with grandma. Dad doesn't want the school to communicate with grandma. What do we do?
 - A. While grandma is not a guardian under the Family Law Act, she is a parent as defined by section 1 of the School Act giving her specific rights. The school can continue to communicate with grandma.

4. Q. There is no court order. We have never met dad but he emails the teacher to tell her he is picking up the student this afternoon. What do we do?
 - A. While dad may have rights, we have never met him or previously communicated. We would communicate with mom to get more understanding. If a potential threat existed we would involve our police liaison officer and potentially MCFD. Even if dad had a technical right to access if we thought there was danger we would put the best interest of the student first and refuse access.

Typically, we get a Family Law Act question concern at least once or twice a month. This illustrates just one aspect of the complexity of our system that the Board should be aware of.