



## STUDENT/PARENT CUSTODY

Family dissolution and other family-related issues are a fact of modern life. However, with increasing frequency, ETFO members are being drawn into custody issues involving students in their care. Involvement of other agencies (e.g. police, CAS, etc.) is on the rise. More and more often, these agencies and lawyers for parents involved in custody disputes contact and request information, documentation and opinions from ETFO members. District school boards should have specific policies and processes developed in consultation with ETFO to address such situations.

Other than where required by law (as outlined below) teachers are not responsible for communications with or between these agencies and officials. Principals are responsible for these communications and coordinating the school's co-operation, if any, with the parent, agency or official in question. Further, parents should make pick up, drop off and other custody-related arrangements with the principal, who in turn should communicate these arrangements to all teachers involved with the student. It is the responsibility of parents to provide proof of custody documents to the school administration at the time of enrollment and later if there are any custody issues. Any teacher involved with the student in question in a contentious situation should ask for and receive from the principal explicit direction on procedures to follow for the release of students, and for the sharing of any information related to the student's progress.

In child custody disputes or other disputes between parents or guardians, members are often approached for student information which can later be used in court. Members are not required to speak with either parent or guardian, nor are they required to give any information or documentation to a parent, guardian or their lawyer. If the lawyer for either parent or guardian requests an interview, the member is under no obligation to participate, even if the student's custodian gives permission. Members should direct any requests for information from parents, guardians, or lawyers on custody issues to their principal.

### Subpoena

A lawyer may, however, issue a subpoena to a member. A member who is subpoenaed must attend court and bring all documents listed in the subpoena, if any. In court, the member may testify and be questioned about facts the member knows through personal experience and knowledge of the student. The member may use personal notes to refresh his/her memory about the student.

Nevertheless, the scope of what can be said in court, or even in an interview with a lawyer or other official is restricted. The member cannot say anything about other students. The member should not comment on the physical, mental or emotional state of a student because that is the role of an expert witness. Lastly, a member cannot comment about information contained in a student's Ontario School Record (OSR). A member should not comment on or reveal any information contained in the OSR without written permission from the student's parent or guardian and without consulting the principal. In other circumstances, members should contact PRS for advice. The OSR is a "privileged" document under the *Education Act* and its contents may not be released without a court order.



If a teacher does breach confidentiality with respect to a student's OSR, this may be a ground of professional misconduct under the *Ontario College of Teachers' Act*.

### **Duty to Report**

Even though the responsibility for arranging and communicating custodial arrangements lies with principals, members are still required to report forthwith suspicions of abuse or other potential harm to a child as required by the *Child and Family Services Act* [section 72.1].

The duty to report is also on-going. This duty is the teacher's duty, not the principal's although the principal may wish to also file a report. If a person has made a previous report about a child and has additional reasonable grounds to suspect that a child is or may be in need of protection, that person must make another report to the CAS.

### **Advice to Members**

In conclusion, when in doubt, ask your principal for clear directions on how to respond to issues arising in custody disputes.

- Do not volunteer information about the child to anyone asking for information unless that person is legally entitled to receive the information.
- Do not assume that a parent of a child, or someone previously involved in parenting the child is automatically entitled to obtain information about the student.
- Communicate with your principal about any custody situation or unusual questioning about a student.
- Ensure that your principal develops an action plan for enforcement of custodial parent instructions so that everyone involved with the student is aware.
- Do not release information from the OSR. Direct any inquiries about it to your principal.

**If you have any questions or concerns about your professional boundaries, please contact your local president or call and speak with a Professional Relations Services staff at 1-888-838-3836 or 416-962-3836.**

ST:LMR:DW:SM  
Revised November 2018  
Vol # 44

