

CUSTODIAL AND NON-CUSTODIAL PARENT RIGHTS

In matters of divorce, the court defines the guardianship rights of parents by establishing a decree ordering one of two types of custody, legal or physical.

Legal custody is a status created by a court order with the following rights and responsibilities:

- (a) The right to determine where and with whom the child shall live;
- (b) The right to have physical custody of the child;
- (c) The right and duty to protect and constructively discipline the child;
- (d) The responsibility to provide the child with food, clothing, shelter, education, emotional security, and ordinary medical care provided that such rights and responsibilities shall be exercised subject to the power, duties and responsibilities of the guardian of the child and subject to residual parental rights and responsibilities of these have not been terminated by judicial decree.

Legal custody cannot be transferred without a court order.

Physical Custody is a status created by the courts in which one parent in a divorce decree has been awarded the right to have the child live with her or him. *It is important to note that having physical custody does not deprive the other parent of legal custody, guardianship, or residual parental rights.*

RSA 458:17, II, states that in the making of any divorce decree, relative to custody of minor children, there shall be a presumption that joint legal custody is in the best interest of the child(ren). Joint legal custody shall include all parental rights, with the exception of physical custody, which shall be awarded, as the court deems most conducive to the benefit of the children.

In emergency cases, a police officer or juvenile services officer may take a child into *protective custody* because the child's life or health is in imminent danger. If the case involves abuse or neglect, a juvenile court may award protective supervision or legal custody to the Division of Children Youth and Families, (DCYF), another child placement agency or a relative.

Finally in rare circumstances, a probate court may award guardianship, which includes legal custody, of a minor child to a person or agency other than the biological parents.

Certain school decisions require parental consent. Those decisions include but are not limited to:

- Registration



- Health issues
- Disciplinary actions
- Individual evaluation, identification and placement under IDEA
- Placement on a 504 Plan of Accommodations.

When a building administrator needs to make a decision regarding a student that requires parental consent, he or she should first check the legal custody status of the parents. If custody is not clear, the building administrator has the authority to request, receive and retain a copy of the court order establishing custody. The parent(s) or person having legal custody should receive notice of and participate in the decision involved. No action, unless in an emergency health situation, can be taken unless custody is clearly established and parental consent is obtained.

Legal References:

RSA 169-C:3, *Child Protection Act; Definitions*

RSA 458-A:17, III, *Uniform Child Custody Jurisdiction and Enforcement Act; Simultaneous Proceedings*

RSA 463:3, I, *Guardianship of Minors and Estates of Minors; Parents' Rights*

Adopted 2001

