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## “Dealing with Parents, Stepparents and Grandparents”: Navigating the Complexities of Families to Determine Who is a Parent

### 1. Who is considered to be a “parent” under Texas law?

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The Texas Family Code defines a “parent” as the mother or father of the child. The term does not include a parent as to whom the parent-child relationship has been terminated.

## Who is a mother?

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A person is considered to be the mother of the child if she gives birth to the child, if maternity has been adjudicated, or if she legally adopts the child.

## Who is a father?

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A person is the legal father if:

- a. he is married to the mother at the time the child is born;
- b. the child is born within 301 days after the marriage ends, regardless of whether the marriage ends by death or divorce; or
- c. he married the mother and voluntarily asserts paternity, and this assertion is a matter of record; or
- d. he executes an unrevoked and unsuccessfully challenged acknowledgement of paternity; or
- e. during the first two years of the child's life, he continuously resided in the household in which the child resided and he represented to others that the child was his own; or
- f. he is adjudicated to be the child's father; or
- g. he adopts the child; or
- h. he consents to assisted reproduction by his wife, which resulted in the birth of a child.

## 2. What are the rights and duties of parents under Texas law?

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The parent-child relationship extends equally to every child and parent, regardless of the marital status of the parents. The Texas Family Code sets out a long list of rights and duties of a parent when there is no court order limiting those rights and duties.

The two provisions that deal with the rights and duties of a parent as it relates to education are:

- a. the duty to support the child, including providing the child with clothing, food, shelter, medical and dental care, and education; and
- b. the right to make decisions concerning the child's education.

## Parental Rights

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These rights belong to each parent independently. Additionally, the rights and duties of a parent are subject to:

- a. a court order affecting the rights and duties;
- b. an affidavit of relinquishment of parental rights; and
- c. an affidavit by the parent designating another person or agency to act as managing conservator.

It is important to note that these rights belong to a parent and not to a stepparent or other relative of the child in the absence of a court order or an affidavit from the parent designating the stepparent or other relative of the child to act as managing conservator.

### 3. What is a “conservator” under Texas law?

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The rights and duties of a parent may be altered as a result of a divorce, a paternity suit, or similar court order affecting the parent-child relationship. The court always strives to accommodate the “best interests of the child”. In that regard, the court will typically appoint both parents as conservators of the child. A parent can be appointed as sole managing conservator, possessory conservator, or joint conservator. Additionally, the court may appoint a nonparent conservator.

### Sole Managing Conservator

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**Sole managing conservator:** A court must appoint one person to be the sole managing conservator or two or more people to be joint managing conservators of the child. A sole managing conservator has several more exclusive rights than the possessory conservator. Three of these rights particularly affect the school’s relationship with the parents and the child:

1. the right to establish the primary residence of the child;
2. the right to consent to medical and psychological treatment; and
3. the right to make decisions concerning the child’s education.

While the sole managing conservator has a lot of power, the possessory conservator still has the right to know about residential, medical, and educational decisions and about the factors requiring these decisions to be made. The sole managing conservator has the duty to keep the possessory conservator informed of these matters. In the end, however, only the sole managing conservator gets to make the actual educational decisions.

# Possessory Conservator

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**Possessory conservator:**

A parent possessory conservator usually only has those rights that a parent has at all times and specific rights during his or her possession of the child. For instance, the Family Code outlines the following specific rights and duties that exist when the parent is in “possession” of the child:

1. the duty of care, control, protection, and reasonable discipline of the child;
2. the duty to support the child;
3. the right to consent to medical treatment not involving an invasive procedure; and
4. the right to consent to emergency medical treatment.

# Joint Managing Conservatorship

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**Joint managing conservatorship:** Perhaps the most complicated, yet most common, court ordered arrangement is a joint managing conservatorship. In this arrangement, the joint managing conservators share the rights of a sole managing conservator.

## Nonparent conservators

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**Nonparent conservators:** Nonparents, including grandparents, aunts, uncles, and stepparents, can and frequently are appointed as conservators for the children. As with parents, they can be appointed sole managing conservators, possessory conservators, and joint managing conservators. Generally, their rights and duties are the same as other conservators.

## 4. What happens in a divorce suit under Texas law?

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Obviously, a suit for divorce is the legal remedy used by individuals seeking to end a marital relationship. The suit may include a final decree regarding the custody of children born through the marriage.

Generally, three types of orders are issued in a divorce case: a temporary restraining order (TRO), a temporary order, and a final decree of divorce.

# TRO

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A TRO can be issued without a final hearing when one party files for divorce. No evidence of misconduct is necessary to obtain a TRO, but the order only maintains the status quo until a temporary hearing can be heard by the court. Consequently, TRO's expire after 14 days.

# Temporary Orders

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After a temporary hearing, the court will issue temporary orders. Unless modified, these temporary orders will govern the parties' relationship with each other and with any children in the marriage. If there are children in the marriage, these orders will set forth the temporary conservatorships for the child, including whether any nonparents have rights to the child. Based on the volatile nature of divorce suits, schools should have copies of the temporary orders as soon as they are available, and school personnel need to be aware of the contents of such orders.

## Final Decree

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The structure of the final decree is similar to that of the temporary orders. However, the decree finalizes the conservatorship and possession orders, at least until a new suit to modify the provisions is filed.

## Parenting Plans and Parenting Coordinators

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The Family Code allows the use of “parenting plans” and “parenting coordinators” in suits affecting the parent-child relationship to assist in promoting the best interests of the children and in helping the litigants resolve their issues relating to parenting. A parenting plan established the parents’ rights and duties with respect to the children and provides procedures for resolution of future disputes. The court may also appoint an impartial third-party to assist the parents in developing and implementing the parenting plan, even over the parties’ objections, in a high conflict case. The parenting coordinator is paid by the parties, like a mediator, except for hardship exceptions. The coordinator has no power to impose a solution and may not testify in court.



## 5. When will a court issue a protective order?

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If there has been family violence, a court may issue a protective order to protect the child or adult. These orders can prohibit a parent from communicating with the child and from coming within a specified distance of the child's school. A protective order may also prohibit the offender from removing the child from the possession of the other parent or it can include a possession order for the parents. A protective order may last for a maximum of two years. If no expiration date is stated in the protective order, it expires on the second anniversary of the date the order was issued.

## Protective Order

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It is important for schools to know if a student is affected by a protective order. If a protective order or temporary ex parte protective order prohibits a person from having contact or having unsupervised contact with a child, the school must act to prevent a violation of the order. Only a court can waive the restrictions in a protective order. Thus, a parent who is protected by the order cannot legally waive its restrictions. Under penalty of contempt of court, no person, including a person protected by the protective order, may give permission to anyone to ignore or violate any provision of the order during the time the order is in effect.

If both parents attempt to pick up a child from school and one is prohibited from having contact with the child, either the school must refuse to release the child while the offending parent is present or call the police.

## 6. What is a guardian ad litem and/or an attorney ad litem?

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When CPS files a suit to terminate the parent/child relationship or the appointment of a conservator for a child, the court must appoint a guardian ad litem and an attorney ad litem or an attorney to serve in the dual role of the guardian ad litem/attorney ad litem.

In a suit in which the best interests of the child are at issue, other than a suit filed by CPS, the court may appoint a guardian ad litem or an attorney ad litem.

## Guardian Ad Litem

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### **Guardian ad litem**

A guardian ad litem is a person appointed to represent the best interests of the child. The guardian is not a party to the suit, but may conduct an investigation necessary to determine the best interests of the child and provide a recommendation to the court.

In the school context, the guardian ad litem may obtain and review copies of the child's relevant school records. The court must issue an order granting the ad litem immediate access to the child and any otherwise privileged or confidential information relating to the child. Thus, if the school establishes the existence of such an order, the student's records may be release to the ad litem since the judicial order would comply with the FERPA exception to parental consent.

# Attorney Ad Litem

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## **Attorney ad litem**

An attorney ad litem is an attorney who provides legal services to a child, and who owes to the child the duties of confidentiality and competent representation. This individual must be a licensed attorney.

The attorney ad litem is required to conduct an investigation to determine the facts of the case. He/she has the authority to obtain and review copies of the child's relevant medical, psychological, and educational records. The attorney ad litem can present evidence, question witnesses, and argue the merits of the child's case.

The court may also appoint the attorney to serve in a dual role as both the guardian ad litem and the attorney ad litem.

When dealing with an ad litem, the school should always request a copy of the order appointing the guardian ad litem or attorney ad litem. If for some reason the order does not grant the ad litem with the authority to obtain relevant educational records, then the school should request the ad litem to obtain a proper court order allowing the release of such records.

# 7. Who is considered to be a “parent” under the IDEA?

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The IDEA defines “parent” as follows:

- a. a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by state law from serving as the parent);
- b. a guardian (but not the state if the child is a ward of the state);
- c. an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare.

## Foster parent

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A “foster” parent is considered a parent for the purpose of IDEA. The definition also indicates that a child who has a foster parent is not considered a ward of the state. Therefore, the child does not need a surrogate parent.

## 8. Under state law, can a student live at his grandparents’ house and claim to be a resident of the grandparents’ school district?

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Section 25.001(b)(9) of the Education Code states that a student will be considered a resident of his or her grandparents’ school district under the following circumstances:

- a. the student does not reside in the district;
- b. the grandparent(s) live in the district; and
- c. the grandparent(s) provide a substantial amount of after-school care for the student as determined by the board.

The district may require evidence of a student’s eligibility under these provisions.

## 9. What rights do parents have under the Texas Education Code?

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Educators must be aware of the significant rights granted to parents under Chapter 26 of the Texas Education Code.

The Supremacy Clause of the United States Constitution dictates that federal law is the supreme law of the land. If a state law is directly in conflict with a federal law, the federal law will prevail. However, many state and federal statutes and regulations coexist “peacefully” since they are not in conflict with each other. The states are always afforded the opportunity to grant parents rights in addition to those outlined in federal law.

## Parental Rights

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Chapter 26 of the Texas Education Code delineates significant parental rights and responsibilities provisions. It is reiterated that “[p]arents are partners with educators, administrators, and school district boards of trustees in their children’s education”. The statute further provides that “[p]arents shall be encouraged to actively participate in creating and implementing educational programs for their children”. The rights set forth in Chapter 26 include, but are not limited to, the following, which are also outlined in your school district’s policy manual:

- the right to petition the board of trustees;
- reasonable access to an administrator for the purpose of reassigning the student;
- the right to request the addition of specific academic classes;
- the right to request that the parent’s child be permitted to attend a class for credit above the child’s grade level;
- the right to graduate earlier than the student would normally graduate;

# Parental Rights

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- access to student records;
- access to state assessments;
- access to teaching materials, including the ability to review teaching materials, textbooks, teaching aids and tests;
- access to board meetings;

# Parental Rights

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- the right to full information concerning the school activities of a parents' child;
- the right to consent to certain activities, including psychological exams, tests, or treatments and the making or authorization of the making of an audiotape or videotape recording of a child (except for purposes of safety, cocurricular/extracurricular activities, regular classroom instruction, or media coverage);
- the right to exempt the child from instruction if the school activity conflicts with the parents' religious or moral beliefs.

All school districts must also adopt a grievance procedure under which the board will address parental complaints.

This list is certainly not exhaustive, as various parental rights statutes are sprinkled throughout the Texas codes.

10. The student's parents are getting a divorce and a ferocious battle over custody of the student is emerging. The mother's attorney called the teacher seeking information about the child's needs and asked if the teacher would come to the custody hearing to testify on the mother's behalf. How should this be handled?

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This can constitute a very uncomfortable situation for district personnel. Many times, the parents attempt to get the teachers in their "corner" to help persuade a judge that he or she is the "better" parent for the child. Sometimes, the parent has his or her attorney call the teacher.

When a parent seeks information that may assist him or her against the other parent, it is a sound practice for school personnel to state that it would be improper to get involved in the dispute. If the parent is insistent, the matter should be referred to the appropriate administrator to handle the situation. Generally, school staff members are under no legal mandate to speak with an attorney should the staff member receive a call regarding custody issues

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Again, the call should be referred to the appropriate administrator who will then contact the district's lawyer. The only time that school personnel must answer questions regarding the student is when they are properly subpoenaed to appear in court. Failure to adhere to a properly issued and served subpoena could result in a contempt of court citation. Thus, the school staff member should appear in court at the appropriate time and place, and truthfully answer the questions asked by the lawyer or judge during a hearing. The school district's attorney should be contacted if there are any questions regarding documents or potential testimony.

11. Drake's dad's new girlfriend, his ex wife's best friend Destiny, wants to get copies of Drake's special education folder. Can she?

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No. She has no parental relationship.



12. Drake's Dad, Kendrick, marries Destiny. Destiny wants to attend the ARD meeting because Kendrick is out of town. Can she? \_\_\_\_\_

Yes. When Kendrick married Destiny, she became a step-parent. A step-parent is a parent under IDEA.

13. Kim leaves her daughter South with Grandma Kris so that she can find herself. The staff suspect that South has a disability in need of specialized instruction. Can grandma sign consent if Kim is nowhere to be found? \_\_\_\_\_

If the grandparent is acting as the parent and the school is unable to reach the parent to get consent, the grandparent can sign consent.

14. Child Protective Services (CPS) showed up on the campus one day and demanded to interview the student. How should the district handle this situation?

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Section 261.302 of the Texas Family Code authorizes a child abuse or neglect investigator to interview the child “at any reasonable time and place, including the child’s home or the child’s school”. Section 261.303 prohibits school personnel from interfering with an investigation of child abuse or neglect. Based on these sections, the Attorney General has held that a school official may not insist that a school employee accompany the child during the interview.

15. Elon’s son Techno, moved in with his girlfriend’s parents. His girlfriend’s mother wants to refer him to special education. Can she?

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No. She is not considered a parent.

16. Brittany turned 18. Her father wants to schedule an ARD meeting to discuss her mental health. Can he?

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Not unless he has guardianship or supported decision making.



## Question & Answer Session

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# Disclaimer

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