

UNDERSTANDING YOUR RIGHTS AND OBLIGATIONS IN CHILD CUSTODY CASES

By Joe Pece

Given that we spend so much time with our students, teachers are in a position to gain unique insight about a child's attitude and behaviour. It is fairly common for teachers to be called upon to offer our observations, opinions, and written records, such as when two parents are in a dispute about child custody.

In such a situation, you might be eager to help guide the proceedings toward what you perceive to be the best interests of the child. Or you might be uncomfortable, not wanting to overstep your bounds or complicate parent-teacher relationships. Either way, you should be aware of your rights and obligations, as well as the restrictions on what you can say and what information you can provide.

Unless you are subpoenaed, you are under no obligation to participate or provide information in a child custody case.

You are under no obligation to participate if a parent, or their lawyer, contacts you for an interview. If you do choose to participate in such a meeting, you may refer to personal notes you have made about the student, and talk about things you know through direct experience. You may not say anything that relates to other students. You also may not comment on the physical, mental, or emotional state of the student, because this is the role of an expert witness. You do not want to have your professionalism or objectivity called into question, so stick to the facts.

Some members have been contacted by the Office of the Children's Lawyer (also known as the Child Advocate). This agency of the Ministry of the Attorney General is sometimes called upon to represent a child who is the subject of a custody battle. Again, you are not obligated to agree to an interview. Even if the request comes to you through school administrators, the decision to participate is yours to make, not the principal's or the school board's. If you choose to participate, the same restrictions as above apply.

Keep in mind that any information you provide regarding the suitability of either parent is very subjective, and will put you in an awkward position. Any statements you make will undoubtedly be provided to both sides in the custody dispute, and could become part of the court proceedings. Be aware that your professionalism could be scrutinized if you are perceived to have sided with one parent against the other. Parents have filed complaints with the Ontario College of Teachers, claiming that a teacher has overstepped their duties.

If you are subpoenaed to appear in court, *you must attend court*. If the court order also details the documents you are to bring,

you must comply with the order and bring all of your notes about the student. You should consult with your principal, who may consult with senior administration, concerning the disclosure of student information. Once in court, you must ask the judge for another court order before disclosing anything about the student found in those documents. Information about students that you have obtained in your role as a teacher is covered by the confidentiality provision of the *Education Act*. Information contained in documents such as notes is also protected under the confidentiality provisions in the *Municipal Freedom of Information and Protection Act*. If you are called upon to appear in court, you should ask the judge to make an order requiring you to disclose the pertinent information.

If you do participate in a child custody case, be sure to only provide facts, not opinion!

It is most important to be aware that information from the Ontario Student Record (OSR) has very restricted status. Most school boards require a court order to release these reports. Even if such an order is made, no information from the OSR may be disclosed without the written approval of the custodial parent or guardian if the student is under 18, or of the student involved if they are an adult. Should a court order be provided, the school board's legal counsel will usually handle the restriction issue.

These can be difficult situations to navigate. Obviously, the student's safety and well-being should be at the top of everyone's mind. However, it is both your right and duty to know how far you can, should, or must go to contribute to the proceedings. Although OECTA does not provide lawyers to assist members in these cases, it is always recommended that you contact your local unit office or the OECTA Provincial Office for advice.

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