

325 GUARDIANSHIP

Background

Guardianship is the legal relationship between an adult and a child, and is different from parentage. An individual can be the parent of a child but not the child's guardian. Guardianship is a bundle of rights and responsibilities held by an adult to be exercised for the benefit of a child.

Custody disputes between parents or other family members may be complicated by the fact that legal custody of the child has not been assigned. In such cases, de facto custody lies with the parent with whom the child lives. The school principal will make this determination based on the information provided.

In October 2005, The School Act was amended to define a parent as a 'guardian' as provided for under section 20 of the Family Law Act, also proclaimed October 1, 2005.

In summary the Family Law Act, current as in 2019, provides that if parents have one of the following types of relationships, they are considered legal guardians of the child:

- Parents were married to each other at or after the time of the birth of the child
- Parents cohabitated for 12 months during which the child was born
- Parents were each other's adult interdependent partners at the time or after the birth of the child
- Parents were married to each other and the marriage was terminated by a decree of nullity of marriage or a judgement of divorce granted less than 300 days before the birth of the child

OR

- The child acquires a usual residence with one of the other guardians if they have a different relationship than described above, but the guardians agree in writing that the other guardian shall continue to be legal guardian for the child
- If the child has usually resided for one year with a parent, even if they no longer reside together in the present

Guardianship may also be appointed under:

- a temporary guardianship order
- permanent guardianship order
- Custody under the Corrections Act, the Corrections and Conditional Release Act, Young Offenders Act

Adults NOT deemed to be legal guardians:

- Extended family members such as aunt, uncle, grandparents
- Step-parents (unless through adoption)

Any individual claiming guardianship rights has the onus of providing proof of the claim with written evidence of the appointment.

Other restrictions may be:

- Parenting Orders – issued by Provincial Court or the Court of Queen’s Bench of Alberta when parents are not able to agree on their responsibilities
- Contact Orders – allows non-parents or non-guardians to make application to the court to spend time with a child

Procedures

1. It is important to establish who the legal guardian is as residence of the student is premised upon the residence of the legal guardian.
2. The legal guardian will sign consent forms, receive any particular notices that are to be used under the School Act (i.e. suspension or expulsion notices), participate in placement decisions, such as those made for a child with special needs, and sign other legal forms such as waiver and identification forms.
3. An individual claiming to be entitled to exercise parental or guardianship rights has the onus of providing proof of the claim and written evidence of the appointment.
4. The appointment of guardianship court document should at a minimum describe the extent of the delegated authority, the time period for which it applies and should be signed by the legal guardian. This is a requirement upon student registration, or if circumstances should change over the school year.
5. At the time of registration, schools will request:
 - a. The applicant to specify the legal guardians of the child they are registering.
 - b. A copy of the birth certificate for the child they seek to register.
 - c. Identification of guardianship be made available through the required documentation as explained above.
 - d. Copies of any orders or agreements affecting guardianship.
 - e. If the family situation has changed over the course of the year, the school will require updated information as to guardianship of the student(s).

6. A digital document shall be kept in the student record of any custody claims which may be received, including dates, times, names and demeanour of persons involved, and as much of their actual statements as it may be possible to record.
7. Any request for access to a student or information (e.g. student report cards, etc.) about a student from a parent with whom the student does not live shall be referred to the Principal.
 - a. Such information may be released to an individual with parental rights.
 - b. An individual who is a parent of a child and for whom there is no court documentation restricting access to the child is assumed to have parental rights.
8. Where a child has more than one legal guardian, the guardians may each exercise the powers, responsibilities and entitlements of a guardian, unless the court has ordered otherwise.
9. Principals are to use their discretion in dealing with such requests, bearing in mind that a court order restricting the access of a parent to their child applies while the child is in school or on school property.

References

Section 1,2,11,32,33,52,53,56,196,197,222 Education Act
Child, Youth and Family Enhancement Act
Domestic Relations Act
Canadian Charter of Rights and Freedoms
Divorce Act
Family Law Act
Student Records Regulation 97/2019

History

Developed: August 2003
Amended: June 2008
Amended: February 2020