



Divorced Parents and the Individuals with Disabilities Education Act (IDEA)

Who is a parent under the IDEA?

The [Individuals with Disabilities Education Act \(IDEA\)](#) is the federal law that says children with disabilities must get a free appropriate public education.

IDEA defines who is considered a parent for special education reasons. The “parent” can take part in the child’s special education decisions. They can also exercise certain rights under IDEA. Under this law¹, a parent is:

- A biological or adoptive parent of a child
- A foster parent, (some states don’t allow this)
- A guardian given the legal power to act as the parent of the child
- A person acting in the place of a biological or adoptive parent that lives with the child. This could be a grandparent, stepparent, or other relative.
- A person who is legally responsible for taking care of the child and
- A surrogate parent who has been appointed by law



The parent is part of the Individualized Education Program (IEP) team. The parent should be involved in the decisions related to the education of the student. But when parents are divorced or never married, the situation might be different.

When Parents are Divorced or Never Married

If both parents have shared legal custody of the child, they are both seen as “parents” for the IDEA. They both have an equal right to play a part in the education of the student and make decisions about special education.

But legal custody and physical custody are 2 different things. For IDEA decisions, it doesn’t matter where a child spends most of their time. What matters is if the legal documents say both parents have shared legal custody. For example, the child may live with Mom for 6 days a week and with Dad for 1 day a week. But if the court documents say Mom and Dad have joint legal custody, then both are considered “parents.” They both have legal rights under the IDEA. Both Mom and Dad can make decisions about the child’s education.

Sometimes, a court order names one specific person to act as a parent or to make educational decisions for the child. This person is seen as the parent under IDEA and can make all educational decisions for the child.²

A school may ask a parent to give them a copy of the divorce agreement, court order, or judicial decree that says which parent has legal or physical custody.

Parents and IEP Meetings

The IEP team must include:

- the parents
- at least one general education teacher
- at least one special education teacher
- a representative of the school district
- someone who can interpret the results of evaluations³

When parents are divorced or never married, the school district must follow any court orders the parents have about custody to figure out who can go to the IEP team meeting. If both parents have joint legal custody, they both have a right to take part in educational decisions for the student. The school district must make reasonable efforts to invite both parents to the IEP team meeting. But if one of the parents doesn't go to IEP team meeting, the meeting still happens with the parent who is there.



It is not reasonable for a school to plan different IEP team meetings for parents who don't get along. But they can try to make it work. For example: Maybe one parent has an order of protection (restraining order) against the other parent. The school might have one parent come to the IEP team meeting in person and the other parent can take part by telephone.⁴

The parent who doesn't go to a meeting should keep getting any legal notices. The notice might be things like the Prior Written Notice (PWN), notices for IEP team meetings, etc. If both parents have educational rights, they can both take part in the student's education. The school must make reasonable efforts to make sure both parents know about what's going on with their child's education.

What about noncustodial parents?

Schools follow court orders related to custodial and educational rights. If the order says that one parent doesn't have rights and can't make decisions, this parent can't be involved in the student's education.

But even after a divorce, parents generally keep their right to inspect and review the student's educational records. This is covered under the [Family Educational Rights and Privacy Act \(FERPA\)](#). Only a court order, state law or other binding document can stop that. It must specifically say that the noncustodial parent lost their FERPA rights or their rights to see their child's school records.⁵ See our fact sheet [Education Records and FERPA](#).

Note: So even if the noncustodial parent can't take part in the student's education, make decisions or go to meetings, they can still inspect and review the student's records. As long as no court or law says they can't.



What if parents disagree on the IEP?

If only one of the parents has legal custody, the other parent ("noncustodial") doesn't have a right to interfere with the student's education. So even if the noncustodial parent disagrees with the IEP, nothing changes.

If both parents have joint custodial rights, and one of the parents agrees to the IEP and the other parent disagrees, then the school will usually move forward with the parent's decision that also aligns with what the school wants to do. The school might also seek out [dispute resolution options](#), such as mediation or a due process hearing, to resolve the disagreement.⁶

If parents who have joint legal custody disagree on the child's education or IEP, they should contact a lawyer to talk about what comes next. If they don't have a family lawyer they can look for one on LawHelpMN.org.

Fact Sheets are legal information NOT legal advice. See a lawyer for advice.

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Laws, Statutes, Rules and Regulations

Note: Some of these citations are for special education administrative hearings. There are not always links you can use. The best way to see them is to bring this fact sheet to a meeting with a school official. The school official usually can access the Special Education database.

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1. [Sec. 300.30 Parent - Individuals with Disabilities Education Act](#)

When Parents are Divorced or Never Married

2. *Same as #1*

Can the school call an IEP team meeting with only one parent?

3. [Sec. 300.321 IEP Team - Individuals with Disabilities Education Act](#)
4. *West Des Moines Cnty. Sch. Dist., (Iowa 04/27/15) (finding that because an order of protection prevented a father with joint legal custody from attending an IEP meeting with the mother present, he was entitled to participate in the meeting through telephone relays).*

What about noncustodial parents?

5. *“Based on the information provided by both the Parent and the District, it appears that the Parent’s loss of custody of the Student did not include a specific revocation of the Parent’s FERPA rights. We, therefore, find that the District violated FERPA as alleged.”* Letter to Graczyk, 123 LRP 23191 (SPPO 12/10/21)

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6. [34 CFR 300.300 \(a\)\(3\)\(i\) - Parental Consent](#)