



**Los Angeles County
Office of Education**

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To: Educational Programs

From: Compliance Support Services

**Topic: Compliance Information Bulletin Number 9
Divorced Parents**

Question: In the case of divorced parents, does the noncustodial parent have the right to participate in his/her child/s education?

In view of the IDEA's encouragement of parental involvement, it seems that a noncustodial parent should be allowed to participate in his/her child's educational planning. HOWEVER, when a court empowered under state law to make custody determinations in divorce action awards sole authority to make decisions to one parent, the other parent may NOT use the IDEA to compel the school district to allow participation in the decision-making process. On the other hand, the IDEA does not compel school districts to exclude the noncustodial parent from the IEP decision-making process, provided both parents agree amicably to joint participation. This makes the issue of participation of noncustodial parents best resolved by agreement between the parents.

Neither the IDEA nor its regulations specifically address the educational rights of divorced parents, a complex issue that involves the intersection of federal education law and state family and education law.

A parent who has shared legal custody, but not physical custody can file for due process based on the court decision and on a case-by-case basis. As a matter of law and common sense, if a properly composed team of educators develops an IEP with which the custodial parent agrees, the team should implement the IEP, while advising the parent who disagrees that he or she may have the right to challenge that decision. The school staff should, however, remain sensitive to the domestic situation of the student and make an effort to work with both parents to the extent authorized under any binding court order of court-approved settlement.

If both parents have shared legal custody and physical custody, they both must be included in all documentation (Permission to Assess, Invitations, etc.). If one parent disagrees with the other, there are no statutory requirements that both parents must agree with the recommendations of the rest of the IEP team. Stated differently, a school district may take the position that if a parent has agreed, the IEP may be implemented.

The Answer Book on Special Education Law, Third Edition by Susan Gorn. LRP Publications

The Answer Book on Individualized Education Programs, 1997 by Susan Gorn. LRP Publications

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