Custody, the Attorney for the Child, and the Education Setting

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The United States Supreme Court only hears a small number of cases each year; in 2011, it reviewed a case involving whether or not Child Protective Service workers can interview a child at school without parental consent. The Supreme Court’s decision in this case, however, left many questions unanswered. Issues regarding interviewing children at school are widespread, and can affect how attorneys for children communicate with their clients. This paper will examine child custody issues and how they interact with the educational setting. Part one discusses the challenges and realities faced by an attorney for the child and school personnel when attempting to conduct interviews with children in the school setting. In part two, this paper evaluates what obstacles the attorney for the child may face when attempting to obtain education records for a client. Part three of this paper discusses the impact of orders of protection and supervised visitation on the educational setting. Lastly, part four assesses how educational decisions are made when a child’s parents are separated. Due to limited case law and secondary sources regarding these issues, interviews were conducted with education lawyers, school administrators, school personnel, and attorneys for children throughout New York. These interviews provide a more comprehensive view of the interaction between custody orders, attorneys for children, and the educational setting.

Part One: Client Interviews at School

The issue of interviewing children at school received the attention of the United States Supreme Court in 2011, when it reviewed the case Green v. Camreta. This case, originating in Oregon, involved a father, Nimrod Green, who was arrested for sexual misconduct with a young

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2 See Greene v. Camreta, 588 F.3d 1011, 1012 (9th Cir. Or. 2009).
boy. Information obtained during Green’s arrest suggested he sexually molested his two daughters as well. As a result, the Oregon Department of Human Services (DHS) assigned caseworker Camreta to investigate these allegations.

After being assigned to the case, Camreta, along with Deputy Sheriff Alford, interviewed one of Green’s daughters (S.G.) at her school for over two hours. DHS did not obtain Mrs. Green’s permission to interview S.G., nor did the department seek a court order or warrant prior to interviewing the child. During the interview, S.G. reported that her father inappropriately touched her; that her mother was aware of it; and that they referred to the touching as “their secret.” As a result of the investigation, the daughters were removed from the Green’s home. The older daughter later recanted her accusations against her father, and an examination of the children assessing whether or not there were signs of sexual abuse was determined to be inconclusive.

Mrs. Green filed an action alleging, among other things, that the “in-school seizure of S.G. without a warrant, parental consent, probable cause, or exigent circumstances violated the Fourth Amendment.” The District Court held that “S.G. had been seized when she was taken from her classroom and interviewed by Camreta and Alford, but that the seizure was ‘objectively reasonable under the facts and circumstances of this case.’” The Court further stated that, “even if the Greens’ constitutional rights had been violated . . . Camreta and Alford were entitled to

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3 See id.
4 See id. at 1016.
5 See id.
6 See id.
7 See id.
8 See id. at 1017.
9 See id.
10 See id. at 1019.
11 See id. at 1020.
12 See id.
qualified immunity because ‘no reasonable school official, caseworker, or police officer would have believed [their] actions violated the Fourth amendment.”¹³

On appeal, the Ninth Circuit reversed its decision in part, holding that, “applying the traditional Fourth Amendment requirements, the decision to seize and interrogate S.G. in the absence of a warrant, a court order, exigent circumstances, or parental consent was unconstitutional.”¹⁴ The Court reasoned that the Fourth Amendment protection applies to child abuse cases, and that “responsible officials must provide procedural protections appropriate to the criminal context . . . [a]t least where there is, as here . . . an in-school seizure and interrogation of a suspected child abuse victim.”¹⁵ The Court of Appeals then affirmed, but held that Camreta and Alford were entitled to qualified immunity, “because the constitutional right at issue was not clearly established under existing law” at the time of the interview.¹⁶

Despite being granted qualified immunity, Camreta and Alford petitioned the Supreme Court of the United States to review the decision that their conduct violated the Fourth Amendment.¹⁷ In order for the Supreme Court to review a decision brought by a prevailing party, all of the parties must continue to have a personal stake in the litigation.¹⁸ By the time the Supreme Court reviewed the case, S.G. had grown up and was no longer in need of protection; she would “never again be subject to the Oregon in-school interviewing practices whose constitutionality is at issue,” so the Supreme Court was unable to decide the Fourth Amendment question.¹⁹ The Court recognized, however, that Camreta would continue to be adversely

¹³ See id.
¹⁴ See id. at 1030.
¹⁵ See id.
¹⁶ See id. at 1033.
¹⁸ See id. at 2025.
¹⁹ See id. at 2026.
affected by this ruling, because he still “regularly engages in that conduct as part of his job. . . [and] [s]o long as [the decision] continues [to be] in effect, he must either change the way he performs his duties or risk a meritorious damages action.”

Because the Court of Appeal’s decision regarding the Fourth Amendment was unreviewable, but Camreta would continue to be harmed by that Court’s “preliminary adjudication,” the Supreme Court determined vacatur was necessary to “strip the decision below of its binding effect,” and “clear[] the path for future litigation.” Therefore, the Supreme Court vacated part of the Ninth Circuit’s opinion, which required a child protective worker to obtain a warrant or its equivalent before interviewing a suspected child abuse victim at school, leaving this question once again unanswered.

In light of this decision, some school districts have responded in more restrictive and protective ways regarding interviewing children at school.

Both attorneys and school personnel agree that there is often a tension between them, and the proper way to handle child interviews at school is certainly one issue of interest. Most schools do not have district-wide policies or guidelines that cover this issue. The policy handbook for the Buffalo Public Schools, for example, does not mention attorneys for children, and there is no provision specifically related to interviews conducted with children while they are at school. Due to a lack of a universal standard, there is variation both between and within school districts as to how to handle these requests.

See id. at 2029.

See id. at 2035.

See id. at 2036.

See Telephonic Interview with Tracy Hamilton, Director, Attorneys for Children Program (Nov. 5, 2010).

See Interview with Melinda Saran, Vice Dean for Student Affairs, University at Buffalo Law School in Buffalo, N.Y. (Nov. 9, 2010).

See Interview with Brenda P. Kelleher, General Counsel for Buffalo Public Schools in Buffalo, N.Y. (Nov. 4, 2010).
There is also some variation regarding attorneys conducting interviews with children at school among local courts. For example, there are two types of court appointment orders for attorneys for children in Erie County. The appointment orders issued in Supreme Court include a provision that the attorney may conduct interviews at the child’s school, while the appointment orders in Family Court do not include this provision.²⁶ Local attorneys for children have petitioned the Family Court Administration to include this provision in its appointment orders, and they are optimistic that the Family Court Administration will implement this change in the future.²⁷

Whether or not interviewing a child at school is beneficial should be determined on a case-by-case basis. Every case is different; in some instances interviewing a child at school may be very effective, because it is sometimes necessary to interview the child in a setting other than the child’s home.²⁸ On the other hand, some clients may feel that an interview conducted at school would be emotionally upsetting or embarrassing. Meeting with the client prior to conducting an interview at the school provides the attorney an opportunity to ask the child’s permission, which would allow the child to avoid potential embarrassment. Some attorneys have adopted this as a rule of practice and habitually do so.²⁹

The potential discomfort of the child is just one of the many reasons attorneys may prefer not to conduct interviews in schools. Removing the child from class for an interview can be disruptive, and this may compound problems for a child already facing academic challenges.³⁰

Children are at school to learn, and an attorney interview could interrupt this process; not only is

²⁶ See Telephonic Interview with Sheila Dickinson, Attorney (Nov. 19, 2010).
²⁷ See id.
²⁸ See Interview with Tracy Hamilton, supra, note 23.
²⁹ See id.; See also Telephonic Interview with Sally Madigan, Attorney (Nov. 12, 2010).
³⁰ See id.; See also Interview with Melinda Saran, supra note 24; See also Telephonic Interview with Linda Jones, Attorney (Nov. 11, 2010).
the child taken out of the classroom, but the child is at risk of being exposed to parental conflicts which can impact their ability to focus in class.\textsuperscript{31} Given the presence of conflict in the child’s home, some attorneys may be reluctant to raise these issues in the child’s “safe place,” unless it is the only feasible option for interviewing the client.\textsuperscript{32} Being asked to leave class and report to the office may cause other students to view the child negatively and impact the child’s reputation among peers.\textsuperscript{33} Lastly, school personnel tend to become very involved and ask many questions when attorneys conduct interviews at school, so it may be preferable to do so elsewhere to keep the process simple and minimally intrusive to the child.\textsuperscript{34} The most common complaint from school districts is that attorneys often arrive to conduct an interview without having made prior arrangements with the school.\textsuperscript{35} The Fourth Department Attorneys for Children Program has addressed this issue by sending mailings to the attorneys for children suggesting that they call schools in advance and ask for a convenient time in the child’s schedule to conduct an interview.\textsuperscript{36}

One potential drawback for some attorneys with respect to advance notification of their intent to interview a child at school is the concern that if they forewarn the school, the parents will also be notified. Attorneys are concerned that parents will then “prep” the child for the interview by coaching them to say or withhold certain information.\textsuperscript{37} Several attorneys indicated the main reason they choose to interview children at school is because the child had been

\textsuperscript{31}See Telephonic Interview with Emilio Colaiacovo, Partner, Bouvier Partnership in Buffalo, New York (Nov. 10, 2010).
\textsuperscript{32} See Telephonic Interview with Linda Jones, \textit{supra} note 30.
\textsuperscript{33} See Telephonic Interview with Melinda Saran, \textit{supra} note 24.
\textsuperscript{34} See Telephonic Interview with Linda Jones, \textit{supra} note 30.
\textsuperscript{35} See Telephonic Interview with Tracy Hamilton, \textit{supra} note 23.
\textsuperscript{36} See id.
\textsuperscript{37} See id.
coached or pressured by one or both parents in the past.\textsuperscript{38} Despite this concern, some attorneys routinely give advanced notice of their intent to interview a child while at school.\textsuperscript{39}

School officials offered several reasons for substantiating the need for attorneys to schedule interviews in advance. Some schools are required to notify the parents in advance of a request by an attorney to interview their child at school.\textsuperscript{40} Advanced notice is also preferred to allow time for school personnel to reserve a private room, and to confirm the identity of the attorney to ensure the child’s safety.\textsuperscript{41} Some school officials hold the view that seeking to interview a child at school without an appointment is “poor practice.”\textsuperscript{42}

Others schools do not allow impromptu interviews before there is an opportunity to explain the situation to the child and put the child at ease.\textsuperscript{43} Some school officials relied on the legal doctrine “in loco parentis,” a Latin expression meaning “in the place of the parent.”\textsuperscript{44} These officials reasoned that advanced notice is necessary to fulfill their duty to guarantee the child’s safety and security while at school.\textsuperscript{45} From the school’s perspective, this practice also fosters a good attorney-client relationship with the child, because it indicates that the attorney has respect for the child’s time and not just the attorney’s own.\textsuperscript{46} Some school officials stated that if an attorney wants the child to have confidence in the legal process and the attorney’s ability to

\textsuperscript{38} See Telephonic Interview with Emilio Colaiacovo, supra note 31.
\textsuperscript{39} See Telephonic Interview with Sally Madigan, supra note 29.
\textsuperscript{40} See Telephonic Interview with Scott Wolf, Principal, Heritage Heights Elementary School in Amherst, N.Y. (Nov. 12, 2010).
\textsuperscript{41} See Telephonic Interview with Diane Grimm, Principal, Grover L. Priess Primary School (Nov. 4, 2010).
\textsuperscript{42} See id.
\textsuperscript{43} See Telephonic Interview with Anonymous School Official (Nov. 10, 2010).
\textsuperscript{44} See Black’s Law Dictionary 803 (8\textsuperscript{th} ed. 2004).
\textsuperscript{45} See Telephonic Interview with Danielle Grimm supra note 41; See also telephonic interview with Anonymous School Official (Nov. 10, 2010). More information available from authors.
\textsuperscript{46} See id.
represent the child, this display of mutual respect is key. By scheduling an interview at a time that is convenient for the child, the attorney is further supporting the child and showing that they are there to serve the child’s needs.

Schools are especially reluctant to take a child out of lunch or a recreational period to attend a meeting with an attorney. Some principals feel that their primary responsibility is to the child, and therefore they have no obligation to allow the attorney to interview the child when it is convenient for the attorney alone. Most attorneys reported understanding when a school cannot accommodate an on-the-spot request, unless they have an upcoming court date and a speedy interview is necessary.

Brenden Kelleher, General Counsel for Buffalo Public Schools, indicated that interviewing children at school is likely an issue principals handle on their own, rather than seeking guidance from the school’s district attorney. Mr. Kelleher reported that in ten years no school had ever contacted him to discuss an attorney’s request to meet with a client at school. Mr. Kelleher further stated that, although he can see how the need may occasionally arise to meet with a client at school, he dislikes the idea in general, because “school is really for learning.” He also stated that schools prefer to avoid becoming involved with family disputes whenever

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47 See id.
48 See id.
49 See id.
50 See id.
51 See id.
52 See Interview with Brenden P. Kelleher, supra note 25.
53 See id.
54 See id.
possible.\textsuperscript{55} That being said, Mr. Kelleher indicated in his experience, principals are very willing to talk to attorneys about particular students.\textsuperscript{56}

Another contested issue between attorneys and school personnel regarding interviewing children is that some schools require the interview be observed. Some school representatives prefer advanced notice so that they can make arrangements for the school social worker or psychologist, both of whom are bound by confidentiality, to be present for the interview, which is required by the school’s policy.\textsuperscript{57} “In loco parentis” was again cited as the reason why a school district cannot permit an attorney to interview the child without a witness present.\textsuperscript{58} One school official explained that, being called to the principal’s office is scary, especially for younger students, and therefore children should have an adult they know and trust present.\textsuperscript{59} This school official felt that this trusted adult is in a better position than the attorney to explain to the child he is not in trouble, that it is important to tell the truth, and that the child should not worry about the outcome of what is discussed.\textsuperscript{60} This school official felt that, because a child may not always understand the attorney’s questions, it is beneficial to both sides to have a third party present to make sure the child is answering truthfully.\textsuperscript{61} This would also help prevent a child from using the interview to “blow a parent in” for being strict or mean, and taking advantage of the situation.\textsuperscript{62} One example given by this school official was a situation in which a child reported things to the attorney from a book that the child read in class as though it happened to him; the school official

\textsuperscript{55} See id.
\textsuperscript{56} See id.
\textsuperscript{57} See id.
\textsuperscript{58} See Telephonic interview with Anonymous School Official, \textit{supra} note 43.
\textsuperscript{59} See id.
\textsuperscript{60} See id.
\textsuperscript{61} See id.
\textsuperscript{62} See id.
was then able to advise the attorney accordingly.63 Schools have reported they are willing to have team meetings with the principal, counselors, and teachers to discuss with the attorney particular issues related to the child.64 None of the individuals interviewed for this paper who witnessed attorney-client interviews reported being called to testify about the content of the interview, however this remains a big concern for attorneys for children.

Most schools do not have a policy mandating that the interviews be observed. Typically, interviews of younger children are observed more often than interviews with older children.65 Each district has their own policy regarding who must be present at the interview if a witness is in fact necessary; some districts require a social worker or the school counselor, while others require the principal be present.66 Some schools only require a witness if the child is uncomfortable or requests that someone from the school be present.67 Other schools recognized that the issues being discussed are family matters, and believe they should be kept private unless a member of the family requests that they be observed.68 Other schools interviewed felt that the appointment orders were clear that the interviews were to be one on one, and therefore they never require that they be observed.69 Some schools reported that they did not require witnesses to observe absent an extenuating circumstance, because they want to eliminate the possibility that an employee will be called to testify about the matter later.70

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63 See id.
64 See id.
65 See Telephonic Interview with Linda Jones, supra note 30.
66 See id.
67 See Telephonic Interview with Amy Gaesser, Guidance Counselor, Brockport Middle School (Nov. 9, 2010).
68 See Telephonic Interview with Scott Wolf, supra note 40.
69 See Telephonic Interview with Danielle Grimm, supra note 41.
70 See Telephonic Interview with Brenden Kelleher, supra note 25.
From the attorneys’ perspective, sometimes the presence of a social worker can be beneficial because they may be more familiar with the child, and they may be able to encourage the child to speak more candidly, particularly if the child is young.71 Additionally, a social worker may be required to observe an interview because of a serious allegation, such as rape, that an attorney would be unable to testify to.72 However, other attorneys indicated observation of the interview waives the attorney-client privilege, and therefore it would be inappropriate.73 If a school will not permit an interview to be conducted without a witness, the attorney may request an order from the judge assigned to the case granting the attorney permission to conduct the interview at the child’s school privately.74

Another issue attorneys sometimes face is when school officials and personnel try to fill the role of “fact-finder” themselves, because they believe they are assisting the attorney in distinguishing true information from false information.75 This may also be an issue when teachers are subpoenaed for trial and the school district attorney intervenes and suggests what the teacher should testify to in advance.76 However, it is not the school’s job to be the “fact-finder” in these cases; the school should provide the attorney with the information and access they are requesting so the attorney can advocate for the child.77

The biggest frustration reported by schools relative to client interviews is a lack of advanced notice given by attorneys. If attorneys made it common practice to schedule interviews ahead of time rather than showing up unannounced, the tension between attorneys and school

71 See Telephonic Interview with Linda Jones, supra note 30; Telephonic Interview with Lisa Girouard, Attorney, Girouard Law Office (Nov. 11, 2010).
72 See Telephonic Interview with Sally Madigan, supra note 29.
73 See Telephonic Interview with Judith Gerber, Attorney, Legal Aid Society (Nov. 9, 2010).
74 See Telephonic Interview with Sally Madigan, supra note 29.
75 See Telephonic Interview with Emilio Colaiacovo, supra note 31.
76 See id.
77 See id.
personnel would be reduced significantly. A letter, fax, e-mail, or telephone call were all identified as acceptable methods of notifying the school of the attorney’s intent to schedule an interview.\textsuperscript{78}

There is a general consensus among attorneys and schools that there should be more communication between them. Attorneys indicated feeling frustrated with schools, and feeling like schools sometime work against them despite that they are both working towards the child’s best interests.\textsuperscript{79} It is important for attorneys to be proactive so that school staff will become familiar with attorneys for children and understand their role.\textsuperscript{80} One attorney interviewed indicated she attempted to meet with the school board and other school officials to explain her job and how schools can support attorneys in fulfilling their role. The more informed a school becomes regarding attorneys for children, the more cooperative the school will be with facilitating child interviews.\textsuperscript{81} All of the schools contacted expressed the need for more open communication with attorneys because they sometimes struggle to deal with legal issues they have not been trained to handle.

\textbf{Part Two: Access to School Records}

Another issue that arises is access to educational records. The attorneys receive a court appointment order when they are assigned to a case, which states they shall have access to education records. This document alone is often sufficient to obtain the client’s records from the school. Most of the school officials indicated they were familiar with court appointment orders, and they always release education records as long as they are provided with the accurate paperwork.

\textsuperscript{78} See id.
\textsuperscript{79} See id.
\textsuperscript{80} See Telephonic Interview with Sally Madigan, \textit{supra} note 29.
\textsuperscript{81} See id.
Attorneys reported that problems can arise when the school releases only the child’s academic and attendance records, and fail to provide other documents, such as counseling notes and the school district enrollment form, because they are important in custody disputes.\textsuperscript{82} For example, a mother might enroll her child and list only her new husband as an emergency contact, which may jeopardize the child’s safety, and thus is relevant in court.\textsuperscript{83} One possible solution to this problem would be to draft a thorough notice for discovery with a “schedule A” attached, listing every possible document the attorney would like access to, to reduce the likelihood the attorney would have to make a second request.\textsuperscript{84} Buffalo public schools receive numerous subpoenas relative to records for custody trials. The district’s general counsel indicated that these subpoenas are often done incorrectly, because attorneys and even some of the Family Court judges do not understand the Family and Educational Rights and Privacy Act (FERPA).\textsuperscript{85}

FERPA requires a judicial order to obtain school records by anyone other than a parent or guardian of the child, as well as notification to the parent or guardian that the request has been made, in order to give them an opportunity to object.\textsuperscript{86} Typically the school will process the attorney’s request, but withhold the records until the attorney is compliant with FERPA.\textsuperscript{87} A court appointment letter is sufficient to comply with FERPA.\textsuperscript{88}

\textsuperscript{82} See Telephonic Interview with Emilio Colaiacovo, \textit{supra} note 31.
\textsuperscript{83} See id.
\textsuperscript{84} See id.
\textsuperscript{85} See Telephonic Interview with Brenden P. Kelleher, \textit{supra} note 25.
\textsuperscript{86} See id; See also The Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232(g) (McKinney 2014).
\textsuperscript{87} See id.
\textsuperscript{88} See id.
Problems can also arise when one parent has sole custody. In these situations, the Buffalo Public School District has the following policy:

The District may presume that the non-custodial parent has the authority to request information concerning his/her child and release such information on request. If the custodial parent wishes to limit the non-custodial parent’s access to the records, it would be his/her responsibility to obtain and present a legally binding instrument that prevents the release of said information.

Most of the school districts interviewed indicated that parents have free access to educational records unless the school is provided evidence to the contrary. Schools want to encourage as much parental involvement as possible, so they take measures to ensure both parents receive adequate information about their child if the parents indicate they desire it. Overall, access to records does not appear to be a significant issue of contention between schools and attorneys. All the schools interviewed indicated they provide records once they receive a copy of the court appointment order.

**Part Three: Court Orders in the School Setting**

It is important that schools be informed of any orders of protection or supervised visitation, so they can make sure they are complying with the orders and protecting the well-being of the child while at school. Supervised visitation orders (SVO) have consistently been a gray area for schools, due to difficulty in determining what they prevent and what they do not. In the case Anne Sans from Action of the Board of Education of the Williamsville Central School District, a mother was denied participation in the child’s in-school activities because of an outdated SVO. The Commissioner held that, “in the case of parental separation and divorce, barring an explicit court order to the contrary, a court order requiring [standard] visitation should not be interpreted to limit parents’ involvement in the normal participation of a child’s

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89 See Anne Sans from action of the Board of Education of the Williamsville Central School District, New York Commissioner of Education Decision Number 12, 223 (September 13, 1989).
education."90 The Commissioner noted that the court order “merely addressed the petitioners right to visitation and [the school should not] exercise its authority to regulate a parent’s involvement with a child beyond the scope of the visitation order."91 A Court order should not be interpreted to limit access beyond what is stated in the order. If the court order is intended to limit interaction between the parent and child in the school setting, it needs to be specifically addressed and included in the order given by the judge. The Sans case illustrates that issues arise when a school is not in direct communication with the court. If the court had ensured the school was notified of any modification to prior orders, the Williamsville School District would not have denied the mother’s participation unnecessarily. Schools need to be kept up to date in relation to parental disputes that involve court orders.

A. Orders of Protection

Pursuant to any custody dispute, a judge may grant an order of protection. The judge can issue a “stay away order,” which requires one party stay away from another, or a “refrain from offensive conduct” order, which specifically addresses the kind of contact one party may have with another.92 A “stay away” order can prohibit a party from visiting specific locations such as the home, a party’s place of employment, or a child’s school.93 It may also indicate locations where visitation is permissible.94 The court may issue an order of protection more generally, including provisions that a party refrain from engaging in any acts that may “create an

90 See id.
91 See id.
92 See Telephonic Interview with Judy Gerber, supra note 73.
93 See New York Domestic Relations Law § 240 (McKinney 2014)
94 See id.
unreasonable risk to the health, safety, or welfare of the child,” in addition to any other provision it deems necessary.95

Principals, guidance counselors, and the Buffalo School District’s general counsel identified many problems concerning orders of protection. The protocol regarding orders of protection can vary between school districts; most require that orders of protection remain in a child’s record even if they are no longer applicable in order to provide a background if issues arise in the future.96 School officials consistently reported concerns with notification of orders of protection involving their students. Courts do not forward an order of protection directly to the school, leaving it unclear who bears this responsibility. Many school officials indicated this makes enforcing the orders of protection difficult.97 Only one instance was reported in which a school was immediately notified of a new order, and that was because the court issued the order in response to an emergency situation.98 Here, the judge issued an order at 2:15 P.M., which required a mother to stay away from her child.99 The child was to be released from school at 2:45, and the mother generally picked up the child from school. The attorney for the child took it upon herself to notify the school in a timely manner to ensure the child’s safety.100

This lack of notification is problematic. There are mandatory education requirements for children until they reach the age of sixteen in New York.101 Because a child is mandated to attend

95 See id.
96 See Interview with Brenden P. Kelleher, supra note 25; See also Interview with Judy Gerber supra note 73.
97 See Interview with Scott Wolf, supra note 40; See also Telephonic Interview with Steve Stutz, principal, St. Charles Catholic School (Nov. 5, 2010); See also Amy Gaesser supra note 67; Judith Gerber supra note 73; Melinda Saran, supra note 24.
98 See Telephonic Interview with Linda Jones, supra note 30.
99 See id.
100 See id.
101 See Interview with Melinda Saran, supra note 24.
school, it should be clear to the court that the school has a responsibility to protect a child, and thus if an order of protection is issued, the court should directly notify the school.\textsuperscript{102}

Inconsistent school notification is also a problem. In many instances, parents who are protected by the order assume the duty of notifying the child’s school. In addition, some attorneys take the responsibility of notifying the school, and speak to school personnel and teachers directly to inform them of the background of the issuance of the order.\textsuperscript{103} Without notification of the order of protection, a school cannot enforce it and keep a child safe. If an order of protection does not exist in the child’s record, the school cannot enforce an order because it has no proof that it exists.\textsuperscript{104} If a school becomes aware of an existing order of protection, it will contact the child’s parent to try to obtain a copy of the order.\textsuperscript{105} An interviewee reported a situation where a school was not informed of an existing order of protection, and so the school contacted a mother after being unable to reach the father (the residential custodian) when there was an issue with their child.\textsuperscript{106} There was an order of protection against the mother prohibiting her from entering the school grounds.\textsuperscript{107} Once she arrived at the school the mother admitted she was violating an order of protection, but indicated she panicked when the school called her.\textsuperscript{108} Upon notification of the existing order, the mother was given a warning and asked to leave.\textsuperscript{109} Without knowledge of an order of protection, schools may contact parents and

\textsuperscript{102} See id.
\textsuperscript{103} See id.
\textsuperscript{104} See Interview with Scott Wolf, \textit{supra} at 40; \textsuperscript{105} See also Interview with Tracy Hamilton, \textit{supra} at 23.
\textsuperscript{106} See id.
\textsuperscript{107} See id.
\textsuperscript{108} See id.
\textsuperscript{109} See id.
request they pick up their child despite it being a violation, which can be dangerous, especially if a parent is not truthful with the school.

Once a school is furnished with a copy of an order of protection, different schools enforce the order in different ways. In the event there is a violation, some schools enlist the assistance of the principal and security staff. Other schools reported enlisting the assistance of local police departments when receiving and enforcing orders of protection, however schools need to produce a copy of the order of protection before the police will enforce that order. Most schools reported notifying staff that are involved in a child’s schooling, such as teachers and counselors, that an order of protection exists. Front office staff and bus drivers are also notified. All of the officials interviewed reported that simple oral notification is not sufficient, and that a hard copy of a written order is necessary. Notification and copies of orders of protection are crucial to ensuring the safety of a child.

Schools are taking additional measures to ensure the protection of children, especially when orders of protection are involved. Examples of supplementary safety measures include: buzzer systems that control when someone can enter the building, keeping parents from going directly to a child’s classroom, new policies regarding the entrance into school by parents, requiring children to be signed in an out of school, and requiring parental identification.

Lack of specificity is one significant issue that schools face when receiving an order of protection. Schools do not like to be in the position of interpreting what is permitted or forbidden.

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110 See Interview with Amy Gaesser, supra note 67; See also Interview with Danielle Grimm supra note 41.
111 See Interview with Scott Wolf, supra note 40, See also Interview with Danielle Grimm, supra note 41.
112 See Interview with Sheila Dickinson, supra note 26; See also Interview with Tracy Hamilton, supra note 23; Steve Stutz, supra note 97; Theresa Girouard, supra note 71.
113 See Interview with Brenden P. Kelleher, supra note 25.
by the order, as it is not their duty to do so. One principal recalled an instance where specificity was the focal point of a father’s attempt to see his son.  

Here, a father, pursuant to an order of protection, was not to have contact with the child before 4:30 P.M. The father called the school in an attempt to have lunch with the child, but the principal denied his request since the order indicated no contact prior to 4:30 P.M. The attorney for the father contacted the principal and indicated that the principal’s interpretation of the order was not what the court intended. The principal told the attorney that is how she interpreted the order and that is how she planned to enforce it. If the court order had been more specific, the principal would not have had to interpret the order on her own and hypothesize as to the judge’s intent. Though it is difficult to account for every instance where an order of protection may apply, a court should consider the major implications of an order of protection and specifically address its effect in the school setting.

Not only should the document be specific, but it should also be legible and easy to read. One principal received a custody and visitation agreement that was to be enforced immediately within the school setting. Upon reviewing the document, however, the principal noticed it contained numerous handwritten changes rendering it illegible, which caused him to question the validity of the document. The document was poorly photocopied so it was missing pieces of the order entirely. Because the document was difficult to read, it was not enforceable.  

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114 See Telephonic Interview with Danielle Grimm, supra note 41.
115 See id.
116 See id.
117 See id.
118 See id.
119 See Interview with Scott Wolf, supra note 40.
120 See id.
121 See id.
school should be provided with a clean, legible copy of a court order so that it can properly be executed.

School officials and attorneys agree that there should be clear guidelines as to school notification of orders of protection. The majority of interviewees indicated at least one situation that could have been avoided if there was proper school notification. Strict notification guidelines might not be feasible for all districts, but the current procedures are problematic.

B. Supervised Visitation Orders

In a custody dispute, a judge has the authority to issue an order that will allow for only supervised visitation for one parent. Generally, supervised visitation will be ordered when “it is found to be in the child’s best interests.”\textsuperscript{122} However, supervised visitation is not intended to “deprive the non-custodial parent of the right to meaningful access to his or her child.”\textsuperscript{123} Many issues arise once a parent’s access to the child has been limited, because there is no exception as to the applicability of the SVO at the child’s school.

When questioned about the existence of SVO’s within the school, many officials indicated that they had either never or rarely dealt with SVO’s.\textsuperscript{124} Though many school officials indicated they were not aware of any SVO’s regarding the children at their school, attorneys for the child showed more familiarity with the topic.\textsuperscript{125} Although SVO’s differ from orders of

\textsuperscript{122}See NYPRAC-DOMREL 21:59. Restricted or Supervised Visitation.
\textsuperscript{123}See id.
\textsuperscript{124}See Interview with Brenden Kelleher, supra note 25; See also Telephonic Interview with Amy Gaesser, supra note 67; See also Interview with Steve Stutz, supra note 97.
\textsuperscript{125}See Interview with Linda Jones, supra note 30; See also Telephonic Interview with Sally Madigan, supra note 29; See also Interview with Tracy Hamilton, supra note 23; See also Telephonic Interview with Sheila Dickinson, supra note 26.
protection, the same problem of lack of school notification exists. Parents, again, have the burden of notifying schools of an existing SVO.126

The terms of an SVO tend to be very broad, in an effort to cover many different situations that may arise. However, if a parent believes the order is too far reaching, he or she may go before the court and petition to have the order modified to be more specific.127

Once an SVO is in place and a school decides to allow for supervised visitation on school grounds, the school needs to determine who will perform the supervision during the visit. SVO’s usually leave the issue of supervision for the schools to determine, thus placing the school in the middle of a parental or guardian dispute.128 School officials do not feel that the school is neutral ground in which a parent can expect supervised visitation.129 School officials believe they should not be placed within an SVO dispute, and that they should not have to make the determination of whether a parent or guardian should partake in school activities.

Issues regarding SVO’s arise consistently within schools when considering field trips, school concerts, and other school activities. When there is a current SVO against a parent who wants to participate, many schools are skeptical about permitting the parent to partake. For example, some schools will not allow a parent subject to an SVO on a field trip.130 They feel that the existence of an SVO is indicative that a parent has done something wrong and that the SVO is an attempt to prevent reoccurrence.131 Many school officials are hesitant to allow a parent to have supervised visitation within a school due to the chance of a parent having one-on-one

126 See Interview with Sally Madigan, supra note 29.
127 See Telephonic Interview with Linda Jones, supra note 30.
128 See Telephonic Interview with Danielle Grimm, supra note 41.
129 See Interview with Scott Wolf, supra note 40.
130 See Interview with Steve Stutz, supra note 97.
131 See Interview with Tracy Hamilton, supra note 23.
contact with the child.\textsuperscript{132} School concerts or other public events within the school are free of this concern due to the public attendance of such an event.\textsuperscript{133} However, as previously discussed, at least some principals interpret the orders strictly, and deny the parent access altogether.

If the order is not written with specificity (as to allow for school event participation), some principals will not allow a parent to be present or participate.\textsuperscript{134} One principal interviewed gave an example of a situation in which she had to interpret an SVO. An aunt asked if she could supervise a mother’s visit with the child at a school party. The order stated that allowing access was up to the school. The principal needed to review paperwork to make a proper decision, which resulted in a denial to the mother for her requested visitation. The principal noted that she did not like being placed in the middle of a dispute that should have been resolved within a court. She further stated that she had not met the mother and did not know all of the issues regarding the dispute, and as such, she felt she was not the proper person to make the determination.\textsuperscript{135}

Schools that have not encountered an SVO provided their input as to what they would do if they encountered one. One school official indicated he would interpret the order as to its four corners, and impose what was specifically included. He would interpret an SVO to not allow the specified parent to participate, unless some other specific instance would allow it (such as the other parent’s participation).\textsuperscript{136} Others expressed that schools have a hard enough time properly

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\textsuperscript{132} See id.
\textsuperscript{133} See Interview with Steve Stutz, supra note 97; See also Telephonic Interview with Linda Jones, supra note 30; See also Interview with Tracy Hamilton, supra note 23.
\textsuperscript{134} See Telephonic Interview with Danielle Grimm, supra note 41.
\textsuperscript{135} See id.
\textsuperscript{136} See Interview with Scott Wolf, supra note 40; See also Interview with Brenden Kelleher, supra note 25.
\end{flushleft}
supervising children, and that they do not want to consider adding parental supervision into the mix. 137

Though SVO’s are less likely to appear in the school setting, it is still important for a school to become aware of these orders. As previously suggested for orders of protection, a school would also benefit from direct school notification of SVO’s regarding any of the school’s students.

**Part Four: Custody and Education Decisions**

Problems can arise when parents must make education decisions on behalf of their child. When a child’s parents are married and share joint custody, most education decisions are made by both parents equally, or one unofficially designated parent. Sex education, school field trips, and special education are all topics that typically involve some discussion between two parents. The outcome of these discussions can greatly affect the child, one way or another. If the child’s parents are in agreement, then the process is typically straightforward, involving the signing of a permission slip or possibly a meeting to discuss the situation with school personnel. However, if the child’s parents disagree about the proper course of action, this can become quite problematic; this is especially the case when the child’s parents are separated.

**A. How Schools Handle Disagreements in Education Decisions; Parental Notification and Consent**

Schools play a large role in how education decisions are made, and who is notified. As expected, these situations are handled differently from state to state and even within the same city. The general consensus seems to be that these decisions are typically addressed in the

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137 See id.
custody agreement that is drafted as part of the initial custody dispute or divorce.138 Custody agreements are not always specific, and sometimes they do not state which parent is entitled to make the education decisions for the child.139 In instances where court involvement has not taken place and a formal custody agreement is lacking, it is even more difficult because there is no custody agreement to follow.140

Whether a parent has sole custody, joint custody, or no formal custody, the agreement will greatly affect how education decisions are made. Typically, a parent with sole custody has the right to make all education decisions for the child without consent from the non-custodial parent.141 On the other hand, when parents share joint custody, the school will ordinarily consult the parent with primary residential custody when faced with education concerns.142

It is necessary for the child’s school to be aware of what the custody arrangement is in order to ensure that the correct parent(s) are notified about relevant information, and that the parents who are granted access to school records receive them.143 Schools are often completely unaware of what the current custody situation is involving their students.144 One principal expressed this view, stating that the school can only do so much, and it is the parent’s responsibility to keep the school informed about the present custody situation.145 Fortunately, his school, a K-8 institution, is not affected by a large amount of custody disputes that disrupt school

140 See id.
141 See Judith S. Bresler, Custody and School Records, 42-APR MD. B.J. 36, 36 (March/April 2009).
142 See id. at 39.
143 See Laura Katers Reilly, Family Law Goes to School, 84-FEB MIBJ 32 (February 2005).
144 See Telephonic Interview with Sheila Dickinson, supra note 26.
145 See Telephonic Interview with Steve M. Stutz, supra note 97.
activities. After thirteen years as a principal, he recalls only three instances where he was informed of a custody dispute.

Joint Custody

At some schools, both parents must consent in order to pursue special education for the child if a joint custody order exists.146 Disputes regarding an education decision are handled in different ways depending on the custody arrangement.147 School principals first look at the divorce decree and custody agreement, which will sometimes resolve the problem immediately if one parent is given sole rights to education decisions.148 If that is not the case, some principals will work with the residential custodial parent.149 If parents have a joint custody agreement, the school will attempt to make sure both parents consent to the education decision.150 If there is disagreement, the principal will meet with both parents to determine their objectives.151 Principals find that these meetings are usually beneficial, and most parents come to an agreement after both sides are heard.152 In the event an agreement cannot be reached, the school can take legal action as a last resort.153

146 See Telephonic Interview with Danielle Grimm, supra note 41 (St. Charles Catholic School is a private school in San Diego, California. The school principal specifically indicated that because it is a private school, it does not have to adhere to public school policies. Many situations are left to the school’s discretion, and when there is uncertainty it is common to call the diocese attorney).
147 See id.
148 See id.
149 See id.
150 See id.
151 See id.
152 See id.
153 See id.
It is quite common for a school to agree with the residential custodial parent if a dispute arises concerning an education decision.154 One principal mentioned that in most joint-custody situations, there is one parent that is very involved, while the other is virtually invisible.155 When this occurs, principals tend to side with the parent that is more involved.156 Ultimately, schools prefer not to get involved in these disagreements, and encourage the parents to resolve the dispute on their own.157

In the eyes of an education law attorney, the proper manner to handle a dispute between joint-custodial parents is for the school to work with the parents to try to help them come to an agreement.158 If this decision involves special education, the parents will then attend a Committee of Special Education meeting.159 If the disagreement is still not resolved, an administrative meeting will be held at the school.160 Ultimately, if the issue is still disputed, the school will typically side with the residential custodial parent.161 Attorneys and school officials interviewed emphasized that many of these steps can be avoided simply by looking for specific language in the divorce decree or custody agreement.162

This lack of uniformity led to a 1995 New York Family Court decision, which addressed how disagreements between parents regarding sex education should be handled.163 In the case Hight v. McKinney, two parents that had joint custody disagreed about their child’s participation

154 See Interview with Scott Wolf, supra note 40.
155 See id.
156 See id.
157 See id.
158 See Interview with Brenden P. Kelleher, supra note 25.
159 See id.
160 See id.
161 See id.
162 See Telephonic Interview with Judith Gerber, supra note 73; See also Telephonic Interview with Danielle Grimm, supra note 41; Interview with Scott Wolf, supra note 40.
in a sex education class. Due to a lack of guidance, the Court evaluated the situation and determined it had three logical options. First, the Court could award sole custody to one parent, while giving the other parent “reasonable visitation rights.” Second, the Court could “make the decision on behalf of the parents.” Finally, the Court could give “decision-making power on this issue to one parent.” Weighing all of the factors, the Court held that the last option would be the least intrusive and most desirable.

In a situation where two parents with joint custody cannot agree on education decisions such as field trips or gifted student programs, one school official suggested the parties return to court to modify the custody agreement. However, this will not give parents a clear indication of what the outcome will be before entering court, because family courts are free to decide which parent will make education decisions based on the facts of the case. New York Courts have demonstrated that when parents with joint custody disagree on a substantial matter, there are no rules governing the resolution of the disagreement other than the child’s best interests.

Non-Custodial Parent

Similar to joint custody, there is no consensus regarding how a school should handle a parent without custody that seeks to make or object to education decisions. One New York Court determined that a non-custodial parent could not request a re-evaluation of his son’s

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164 See id.
165 See id.
166 See id. at 984.
167 See id.
168 See id.
169 See id.
170 See Laura Katers Reilly, Family Law Goes to School, 84-FEB MIBJ 32 (February 2005).
171 See Ralph D. Mawdsley, Non-Custodial Parents’ Right to Direct the Education of Their Children, 199 ED. LAW. REP. 545, 560 (September 2005).
173 See Laura Katers Reilly, Family Law Goes to School, 84-FEB MIBJ 32 (February 2005).
special education needs in *Fuentes v. Board of Educ. Of City of New York*. In Fuentes, the Court held that the non-custodial parent did not have standing over his child’s education decisions. In coming to this decision, the Court analyzed the definition and responsibilities of a parent. Looking to *Tyler v. Dept of Educ.*, the Court determined that while the non-custodial parent may be deemed a “parent,” that does not entitle him to make education decisions for the child.

At a local school, there was an instance where a child had severe mental health issues and the non-custodial father strongly objected to the custodial mother’s education decisions. The principal explained to the father that due to the custody order, the mother retained the right to make education decisions. The principal sat down with the father and explained the mother’s decision and why she felt that was best for the child. Interviewees in other parts of the state reported a similar protocol; the non-custodial parent does not lose the right to stay informed about the child’s education, but the parent loses the right to make the decision.

**B. Recommendations**

Based on the inconsistencies throughout New York in dealing with parents in the education setting, it seems that a uniform policy on these matters would be beneficial. However, a more feasible approach would be to mandate each school district to create guidelines in dealing with these issues. Guidelines could leave room for discretion, as some situations may require different treatment. Another resolution would be to ensure that from this point on, courts are

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175 See id.
176 See id.; See also Interview with Melinda Saran, *supra* note 24.
178 See Telephonic Interview with Danielle Grimm, *supra* note 41.
179 See id.
180 See id.
181 See Telephonic Interview with Amy Gaesser, *supra* note 67.
careful in deciding how education decisions will be handled in custody orders, and requiring that these orders be sent directly to the school. If education decisions are clearly outlined in custody agreements, there will be fewer disputes concerning who handles the education decisions on behalf of the child.182

Conclusion

It is evident that custody issues taking place in a student’s life often create problems and concerns for schools. School officials often lack guidance as to how to properly address these issues, and are left to form their own opinions on how to handle these situations. A school’s central focus should be to do what is in the best interest of the child, but achieving this becomes complicated if the school lacks vital information. There should be consistency in an attorney’s ability to interview a client across school districts. It is also imperative that schools be notified about any orders of protection or custody or visitation orders that involve their students. Furthermore, custody agreements should be written in a way that school administrators are not left to guess how to handle a situation where parents cannot agree on education decisions for their child.

182 See Telephonic Interview with Theresa Girouard, supra note 71 (Ms. Girouard, an attorney for the child, emphasizes the need for a custody agreement that specifies which parent has the authority to make education decisions for the child. She believes this will clear up many problems that are currently faced by schools.)