

What is legal custody of a child?

Legal custody of a child refers to the legal arrangements for how major decisions about a child will be made. The major decisions that fall under legal custody deal with a child's education, health/welfare, and religion. However, not all decisions touching these topics are legal custody decisions. For example, with respect to education, legal custody decisions include where a child will attend school or whether a child will skip a grade, not what backpack a child will use for school. With respect to a child's health and/or welfare, legal custody decisions include whether a child will get braces or attend therapy, not whether a child is given over-the-counter children's vitamins. With respect to religion, legal custody decisions include what religion a child will practice, not whether a child will use a playground on the property of a religious institution.

There are different types of legal custody arrangements that can be awarded by a court or agreed to by parents or guardians of a child including **joint legal custody**, **joint legal custody with final decision making authority to one party**, and **sole legal custody**.

Joint legal custody places the parents or guardians on equal footing regarding the aforementioned decisions for a child. When a decision needs to be made, the parties will need to consult one another and make the decision jointly as neither party is permitted to overrule the other.

Joint legal custody with final decision making authority to one party requires the parties to consult one another and attempt to make decisions together but in the event of an impasse, one party has the authority to make the final decision. Within joint legal custody with final decision making authority, there are various arrangements that can be made. For example, a party can have final decision making authority on all legal custody decisions or on one specific topic, e.g. religion. Additionally, parties can each have final decision making authority on specific topics, e.g. one party makes final decisions on education and the other makes final decisions on health. Similarly, if parties have more than one child, each party can have final decision making authority for one child.

Sole legal custody permits a parent or guardian to make all legal custody decisions for a child. Depending on the specifics, a sole legal custodian may or may not be required to provide notice to the other party regarding legal custody issues impacting the child.

Generally, joint legal custody is favored by courts as it can provide the best scenario for both caretakers to be involved in decision making which, in the majority of cases, is in the best interest of the child. Courts also recognize that there are instances where parties cannot make decisions together due to communication issues between the parties or even malice on the part of one or both parties. In such cases, final decision making authority and/or sole legal custody may be ordered.

Just as a court can award a variety of legal custody arrangements, parties can agree upon the terms of legal custody of a child. Though reaching an agreement regarding legal custody can be difficult, it is in the best interest of a child for his or her caretakers to come to an agreement versus a court making a determination.

If you have a legal custody issue, you should consult with an experienced attorney to obtain advice best suited for your matter.

Lynette Kleiza is a principal with Paley Rothman and practices law in D.C., Maryland, and Virginia.