

Judge Bruce R. Cohen
Family Department Presiding Judge
Maricopa County Superior Court
125 West Washington, Suite 101
Phoenix, Arizona 85003

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:) Supreme Court
) No.
PETITION TO AMEND RULES 44.1(c),)
45(c), 78(g) AND 91.3, ARIZONA)
RULES OF FAMILY LAW PROCEDURE)

BACKGROUND

This is a proposal to amend Rules 44.1(c), 45(c), 78(g) and 91.3 of the *Arizona Rules of Family Law Procedure* (ARFLP). For all final orders when children are involved, whether in a decree or post-decree order, the court should be required to issue a “School Order” substantially in conformity with the attachments hereto.

Over the past five decades, there has been a significant evolution in the substance of orders entered by the court in family cases involving children. In the early to mid-1980s, many orders issued by the courts stated little more than the following: “Mother/Father is awarded custody of the children and the other parent is entitled to reasonable visitation.” The orders uniformly

failed to specify the rights and responsibilities that attached to the custody award and rarely detailed what constituted “reasonable visitation.”

Since that time, there have been steady yet incremental improvements on the parenting orders issued by courts. Many of those changes were in response to the kinds of issues that non-specific orders created for parents and children, while other improvements have followed legislative or rule-driven requirements. And while contesting parents continue to present issues that challenge the family court legal system, the required specificity of legal decision-making and parenting time terms have certainly furthered the protections of a child’s best interests.

With this understanding as to how specificity has been beneficial, it is important to consider where issues continue to arise. One such area relates to education and, more specifically, schools. When a court issues a parenting order, it binds the parties to those terms. Yet schools are impacted in many ways by those terms, intended or unintended. Additionally, it is not uncommon for schools to find themselves to be in the middle of parental disputes. This impacts not only the education of the child involved, it may and often does impact negatively other students and the ability of educators to meet the needs of their students. The problems are exacerbated when

parents believe that the parenting orders are binding on the schools or that the schools must interpret and apply the parenting terms.

After significant consultation throughout the State with educators, school officials and members of the Bar who focus on education law, several areas for improvement were identified for which further clarity or guidance to schools and parents would be of great assistance. From that, a proposed form of order was developed, examples of which are attached to this petition. Versions similar to the attachments were met with enthusiastic support from the educational community. Further, these same versions were presented to the Family Court Improvement Committee (FCIC) of the Supreme Court. The FCIC voted unanimously in support of a rule that would require the issuance of orders in substantial conformity with the examples attached in all cases involving children.

IMPACTED RULES AND PROPOSAL

Rules 44.1(c) 45(c), 78(g) and 91.3 are all implicated in addressing this issue. It is proposed that for all matters in which children are involved, whether by initial order, decree, judgment or post-decree rulings, there be a requirement that the court issue an “education order” substantially in conformity with the attachments. While it may also be appropriate to amend Rule 97 and create forms numbered 18 and 19 to the rules, it is suggested

that the amended rules defer the creation of the approved forms to AOC. This will eliminate the need for rule changes as potential improvements to the forms are identified.

FINAL NOTE

It is understood that under existing rules, there are many forms required to be issued by the court and reluctance to add to those mandates. That said, the proposal here suggests forms that are contain generally applicable terms, minimal customization, and allow parents to provide schools with these orders in place of their detailed decree or court order. Parents have certain privacy rights and can preserve some of that privacy by having orders proposed herein to supply schools with needed information while not also having to supply other personal information on finances, property, support or matters which do not require dissemination to a child's school.

RESPECTFULLY SUBMITTED this 4th day of January, 2023.

Bruce R. Cohen

Judge Bruce R. Cohen

Family Court Presiding Judge

Maricopa County Superior Court

125 West Washington, Suite 101

Phoenix, AZ 85003

SAMPLE SCHOOL ORDERS

**IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF**

In re the Matter of:

Petitioner/Parent A

v.

Respondent/Parent B

CASE NO. _____

**JOINT LEGAL DECISION-MAKING
EDUCATION ORDER**

THE COURT FINDS AS FOLLOWS:

1. The parties have the following minor child(ren) (hereinafter "minor child(ren)"):

Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
2. An Order regarding legal decision-making and/or parenting time was entered by this Court on _____ in the best interests of the minor child(ren).
3. It furthers the best interests of the minor child(ren) for this Court to enter the following school-specific order that reflects relevant provisions under the court-ordered parenting plan. This order serves to supplement, but not modify or replace, the provisions set forth in the court-ordered parenting plan. For the purpose of this order, the terms shall apply equally to schools, pre-schools, and institutional childcare providers.
4. It is a stated goal of the Court to eliminate or at least reduce the enmeshment of school officials and teachers in disputes between the parents, and the terms herein are designed to meet that objective.

Based thereon,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Binding Upon Parties:

This order is binding upon the parents, who are responsible for complying with its terms and the terms in the parenting plan. Unless otherwise provided, it is not binding on a school but is provided as guidance for a school.

2. Delivery to School:

The parents are required to provide a copy of this order to the child(ren)'s school(s).

3. Legal Decision-Making:

As it relates to education and/or school issues for the minor child(ren), legal decision-making in the best interests of the minor child(ren) is as follows:

Joint legal decision-making authority with neither parent entitled to any greater decision-making authority.

Joint legal decision-making authority with _____ entitled to presumptive decision-making authority in the event of a disagreement between the parties after a good faith effort to resolve the issue.

Joint legal decision-making with _____ entitled to final decision-making authority in the event of a disagreement between the parties after a good faith effort to resolve the issue.

4. Parenting Time and Child Pick-Up:

The Parenting Plan ordered by the court designates each parent's time with the child(ren). The parents are expected to abide by that schedule, unless otherwise agreed. That schedule is not binding on the school. Therefore, the school should not use the parenting schedule as a basis to deny either parent access to their child(ren) nor shall either parent instruct the school to limit contact, unless otherwise ordered.

Each parent may designate other individuals who are authorized to pick up the child(ren). In the event of a dispute between the parties as to any such individuals, the persons designated by either parent shall remain authorized to pick up the child(ren) until the parties reach an agreement or secure a court order to the contrary.

-or-

The following listed individuals are not permitted to pick-up the minor child(ren) from school without written consent of

Other:

5. Contact Information and Emergencies:

Each parent's home address, e-mail, cell phone and any other contact information shall be provided to the school and listed by the school as the contact information for the child(ren). Both parents shall be listed as the first two emergency contacts. Additional contacts may be listed but in the event of a dispute between the parties, the school shall list any person requested by either party until the parties reach an agreement or secure a court order to the contrary.

The school may contact either parent about the child(ren), and it may contact any of the listed individuals in an emergency if neither parent can be reached. In the event of an emergency, either parent may make decisions for a child(ren)'s immediate care.

-or-

Other:

5. Access to School Grounds:

Subject to the policies of the school, there are no restrictions on either parent's right to participate in any school activities or events at which parents are generally permitted to attend.

Both parents are entitled to equal access to school grounds, including, without limitation, attending a child(ren)'s events or activities, volunteering in the classroom and/or school events, attending lunch, or volunteering in the classroom or for field trips in the same fashion as all other parents who have children enrolled at the school. Neither parent may limit the other parent's ability to enter school grounds or participate in school activities without a court order to the contrary.

Each parent may authorize others to attend school-related events or activities unless restricted by order of the court.

-or-

The following listed individuals are not permitted on school grounds, to attend field trips, or to otherwise participate in in-person school activities to pick-up the minor children from school without written consent of

Other:

6. Extra-Curricular Activities

Each parent is authorized to sign consent forms for the child(ren) to participate in extra-curricular activities. In the event the parents disagree about the child(ren)'s involvement in such activities, the issue shall be addressed in accordance with the legal decision-making authority determined by the court. If neither parent has superior decision-making authority, the burden shall be on the parents, and not the schools, to resolve the issue through agreement or order of the court consistent with the legal decision-making orders entered by the court.

-or-

It is anticipated that the child(ren) will participate in extra-curricular activities. If there is a disagreement between the parties, only _____ has the authority to sign any permission slip or authorization.

7. Access to School Records and Parent Portal:

Both parents are entitled to equal access to the child(ren)'s school records. Neither parent may restrict the other parent's access to information. Further, each parent shall be individually responsible for contacting the school and requesting to be included on any mailing or distribution list.

-or-

The following persons are not permitted access to the child(ren)'s school records and are NOT entitled to receive information from the school or be made part of any mailing or distribution list

Other:

Both parents are entitled to access the school's student information system or online parent portal(s) (e.g. ParentVUE, Google Classroom, Infinite Campus etc.). Unless the school allows each parent to have an individual login account, the parents shall create a joint login ID and password, which shall not be changed or modified without the consent of the other parent.

-Or-

The following persons are not permitted access to the school's online parent portal(s)

Other:

8. Parent-Teacher Conferences:

Each of the parents shall have the equal right to confer with teachers and counselors concerning a child's education and other activities. For regularly-scheduled parent-teacher conferences (e.g. the conference days established on the school calendar), the parents may attend jointly. Any request for separate conferences shall be addressed in the sole discretion of the school and may or may not be accommodated. The school may, in its discretion, require the parents to attend separate conferences or require one or both of the parents to participate through a virtual platform if joint attendance is disruptive or not productive.

-Or-

The following persons shall not confer with the teacher or school official and is not authorized to attend any parent-teacher conferences, whether individually or jointly with the other group:

9. Curriculum and Instruction Disputes:

In the event there is a disagreement between the parties as to the child(ren)'s involvement in any specific curricular activities, the subject matter being taught by the school (including books associated with the school curriculum), or the method of instruction, the issue shall be decided consistent with the legal decision-making authority assigned by court order. If neither parent has superior decision-making authority, the school shall implement its standard curriculum and method of instruction until such time that the parties reach an agreement or secure a court order.

10. Special Services:

If the child(ren) is eligible for or being considered for a 504 Plan, an Individualized Education Program (IEP), an Individualized Service Plan (ISP), a Multi-Disciplinary Evaluation Team (MET), or other special services, both parents are entitled to attend all meeting with school officials in which parents are permitted to attend and are authorized to have access to all records and testing results. If one parent receives notice of a meeting, that parent shall provide that same notice via e-mail or text to the other parent within 24 hours of receipt of the meeting notice.

Whether initiated by the school or either parent, an evaluation as to the child(ren)'s eligibility for special services shall proceed so long as at least one parent consents, absent any decision-making authority assigned to one parent. Upon completion of any evaluations or assessments, the parents, along with the school officials, shall confer about enrolling the child(ren) in any such special services. If there is no

agreement between the parties, and absent any decision-making authority assigned to one parent, the issue shall be decided in accordance with the legal decision-making orders of the court.

If there is an Individualized Health Plan (IHP) for the child(ren), both parents shall cooperate with the implementation of the plan. In the event of a disagreement between the parents and absent any decision-making authority assigned to one parent, the IHP shall be implemented until the contesting parent secures a court order to the contrary.

10. School Selection:

Agreements between the parties as to school selection are not binding on the school or school district. Enrollment of a child in a particular school is subject to the school's policies or rules, space availability, enrollment restrictions set by the school or school district or its authorizer (if a charter school), and state law. If the parties anticipate a dispute as to school selection, each party may submit enrollment documentation to the school of choice solely for the purpose of reserving the child(ren)'s place at the school in the event that parent's choice becomes the selected school.

In the event an issue arises regarding a change in schools for the child(ren),

(a) absent an agreement between the parties, the determination shall be decided as directed by the court. Until there is an agreement, no change shall be made to the child(ren)'s current school attendance.

(b) _____ shall have authority to decide the school choice, subject to the other parent securing a court order to the contrary.

11. Future Litigation:

In the event of any future modification or enforcement proceeding regarding parenting-related issues, involvement of the child(ren)'s school and its officials should be kept to a minimum. The parties shall put forth best efforts to agree upon the admission of school records or communications without the need for foundational testimony or shall agree upon the submission of an affidavit from the custodian of records to authenticate the records in lieu of testimony, whenever possible.

If a teacher or school official is required for substantive testimony, the scheduling of such testimony shall, when possible, be set at a time that is least disruptive to the school, its other students, and its operations. Such witnesses may be taken out of order to accommodate this goal. Further, assuming the court can accommodate virtual appearances by the teacher or school official, it shall be assumed that the witness shall be permitted to appear through a remote or virtual platform in lieu of a personal appearance. If either party believes that a personal appearance for testimony is required, that party shall seek leave of the court as much in advance of the scheduled proceeding as is possible for requiring a personal appearance.

12. Additional Orders:

Signed this _____ day of _____ 20__

By: _____
Judicial Officer
Superior Court of

ORIGINAL of the foregoing e-filed
this ___ day of ___, 20__ with:

Clerk of Court

COPY of the foregoing e-mailed/mailed
this ___ day of ___, 20__ to:

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF

In re the Matter of:

Petitioner/Parent A

v.

Respondent/Parent B

CASE NO. _____

**SOLE LEGAL DECISION-MAKING
EDUCATION ORDER**

THE COURT FINDS AS FOLLOWS:

1. The parties have the following minor child(ren) (hereinafter "minor child(ren)"):

Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
Name: _____	Born: _____
2. An Order regarding legal decision-making and/or parenting time was entered by this Court on _____ in the best interests of the minor child(ren).
3. It furthers the best interests of the minor child(ren) for this Court to enter the following school-specific order that reflects relevant provisions under the court-ordered parenting plan. This order serves to supplement, but not modify or replace, the provisions set forth in the court-ordered parenting plan. For the purpose of this order, the terms shall apply equally to schools, pre-schools, and institutional childcare providers.
4. It is a stated goal of the Court to eliminate or at least reduce the enmeshment of school officials and teachers in disputes between the parents, and the terms herein are designed to meet that objective.

Based thereon,

IT IS HEREBY ORDERED AS FOLLOWS:

1. Binding Upon Parties:

This order is binding upon the parents, who are responsible for complying with its terms and the terms in the parenting plan. Unless otherwise provided, it is not binding on a school but is provided as guidance for a school.

2. Delivery to School:

The parents are required to provide a copy of this order to the child(ren)'s school(s).

3. Legal Decision-Making:

As it relates to education and/or school issues for the minor child(ren), legal decision-making in the best interests of the minor child(ren), _____ has sole legal decision-making authority in the event of a dispute between the parents. Such sole authority is subject to the terms set forth herein.

4. Parenting Time and Child Pick-Up:

The Parenting Plan ordered by the court designates each parent's time with the child(ren). The parents are expected to abide by that schedule, unless otherwise agreed. That schedule is not binding on

the school. Therefore, the school should not use the parenting schedule as a basis to deny either parent access to their child(ren) nor shall either parent instruct the school to limit contact, unless otherwise ordered.

Each parent may designate other individuals who are authorized to pick up the child(ren). In the event of a dispute between the parties as to any such individuals, the persons designated by either parent shall remain authorized to pick up the child(ren) until the parties reach an agreement or secure a court order to the contrary.

-or-

The following listed individuals are not permitted to pick-up the minor child(ren) from school without written consent of

Other:

5. Contact Information and Emergencies:

Each parent's home address, e-mail, cell phone and any other contact information shall be provided to the school and listed by the school as the contact information for the child(ren). Both parents shall be listed as the first two emergency contacts. Additional contacts may be listed but in the event of a dispute between the parties, the school shall list any person requested by either party until the parties reach an agreement or secure a court order to the contrary.

The school may contact either parent about the child(ren), and it may contact any of the listed individuals in an emergency if neither parent can be reached. In the event of an emergency, either parent may make decisions for a child(ren)'s immediate care.

-or-

Other:

5. Access to School Grounds:

Subject to the policies of the school, there are no restrictions on either parent's right to participate in any school activities or events at which parents are generally permitted to attend.

Both parents are entitled to equal access to school grounds, including, without limitation, attending a child's events or activities, volunteering in the classroom and/or school events, attending lunch, or volunteering in the classroom or for field trips in the same fashion as all other parents who have children enrolled at the school. Neither parent may limit the other parent's ability to enter school grounds or participate in school activities without a court order to the contrary.

-or-

The following listed individuals are not permitted on school grounds, to attend field trips, or to otherwise participate in in-person school activities to pick-up the minor children from school without written consent of

Other:

6. Extra-Curricular Activities

It is anticipated that the child(ren) will participate in extra-curricular activities. If there is a disagreement between the parties, only _____ has the authority to sign any permission slip or authorization.

7. Access to School Records and Parent Portal:

Both parents are entitled to equal access to the child(ren)'s school records. Neither parent may restrict the other parent's access to information. Further, each parent shall be individually responsible for contacting the school and requesting to be included on any mailing or distribution list.

-or-

The following persons are not permitted access to the child(ren)'s school records and are NOT entitled to receive information from the school or be made part of any mailing or distribution list

Other:

Both parents are entitled to access the school's student information system or online parent portal(s) (e.g. ParentVUE, Google Classroom, Infinite Campus etc.). Unless the school allows each parent to have an individual login account, the parents shall create a joint login ID and password, which shall not be changed or modified without the consent of the other parent.

-Or-

The following persons are not permitted access to the school's online parent portal(s)

Other:

8. Parent-Teacher Conferences:

Each parent has the right to confer with teachers and counselors concerning a child's education and other activities. For regularly-scheduled parent-teacher conferences (e.g. the conference days established on the school calendar), the parents may attend jointly. Any request for separate conferences shall be addressed in the sole discretion of the school and may or may not be accommodated. The school may, in its discretion, require the parents to attend separate conferences or require one or both of the parents to participate through a virtual platform if joint attendance is disruptive or not productive.

-Or-

The following persons shall not confer with the teacher or school official and is not authorized to attend any parent-teacher conferences, whether individually or jointly with the other group:

9. Curriculum and Instruction Disputes:

In the event there is a disagreement between the parties as to the child(ren)'s involvement in any specific curricular activities, the subject matter being taught by the school (including books associated with the school curriculum), or the method of instruction, _____ shall have decision-making authority.

10. Special Services:

If the child(ren) is eligible for or being considered for a 504 Plan, an Individualized Education Program (IEP), an Individualized Service Plan (ISP), a Multi-Disciplinary Evaluation Team (MET), or other special services, both parents are entitled to attend all meeting with school officials in which parents are permitted to attend and are authorized to have access to all records and testing results. If one parent receives notice of a meeting, that parent shall provide that same notice via e-mail or text to the other parent within 24 hours of receipt of the meeting notice.

If there is an Individualized Health Plan (IHP) for the child(ren), both parents shall cooperate with the implementation of the plan. In the event of a disagreement between the parents, _____ has decision-making authority.

10. School Selection:

Agreements between the parties as to school selection are not binding on the school or school district. Enrollment of a child in a particular school is subject to the school's policies or rules, space availability, enrollment restrictions set by the school or school district or its authorizer (if a charter school), and state law. In the event an issue arises regarding a change in schools for the child(ren), _____ shall have authority to decide the school choice.

11. Future Litigation:

In the event of any future modification or enforcement proceeding regarding parenting-related issues, involvement of the child(ren)'s school and its officials should be kept to a minimum. The parties shall put forth best efforts to agree upon the admission of school records or communications without the need for foundational testimony or shall agree upon the submission of an affidavit from the custodian of records to authenticate the records in lieu of testimony, whenever possible.

If a teacher or school official is required for substantive testimony, the scheduling of such testimony shall, when possible, be set at a time that is least disruptive to the school, its other students, and its operations. Such witnesses may be taken out of order to accommodate this goal. Further, assuming the court can accommodate virtual appearances by the teacher or school official, it shall be assumed that the witness shall be permitted to appear through a remote or virtual platform in lieu of a personal appearance. If either party believes that a personal appearance for testimony is required, that party shall seek leave of the court as much in advance of the scheduled proceeding as is possible for requiring a personal appearance.

12. Additional Orders:

Signed this _____ day of _____ 20____

By: _____
Judicial Officer
Superior Court of

ORIGINAL of the foregoing e-filed
this ____ day of ____, 20__ with:

Clerk of Court

COPY of the foregoing e-mailed/mailed
this ____ day of _____, 20__ to:

By: _____