

KNOW THE LAW

Who May Pick Up a Child from Child Care?

In California, part of a child care provider's legal responsibility for the children in her care is an obligation to let the child leave *only* with an authorized person. In most cases, there's little question about who has custody of children.

But parents sometimes disagree about custody of a child. One parent may have custody rights but the other parent demands to take the child. People other than parents may have legal authority over a child. Sometimes parents, for convenience or other reasons, ask a non-parent to pick up a child.

The following questions and answers should help child care providers and parents alike understand who may pick up a child from child care. Note that the word "parent" in the answers to these questions is intended to cover non-parents (like grandparents or others) to whom a court may have awarded custody, either temporarily or permanently.

Who May Pick Up a Child from Child Care?

In theory, the law is very clear about this question. For their protection, children are always in the legal "custody" of an adult. While they are in a child care setting that a parent or other person responsible for a child has selected, the provider is legally responsible and **may release a child only to certain people**. Unless a court has ordered otherwise, these people are:

- A parent or legal guardian
- A person who has written authorization from the parent with *physical custody* (more on this below)

- Police and child welfare workers who have proper authorization.¹

How Can a Provider Know if the Person Enrolling the Child Has Parental Rights?

Ask the enrolling parent what his or her parental relationship is to the child and whether any legal document affects custody of the child. In addition, ask whether anyone else has a legal relationship with the child and whether the child has been the subject of any court proceedings.

Who May Enroll a Child in Child Care?

If the child's parents are married and have not taken any legal steps to separate, either one may enroll the child because they both have equal rights to custody. This is true even if the parents do not live together. Otherwise, only the parent with *legal* custody (see below) may enroll the child.

What Information Should a Child Care Provider Ask for When Enrolling a Child Into Care?

Ask the adult who enrolls the child

- what the adult's relationship is to the child
- whether anyone else has a legal relationship to the child
- whether the child has been the subject of any court proceedings
- what the child's living arrangements are, i.e., whether the child lives with both parents, one parent, grandparent, step-parent, etc.
- name and contact information of the non-enrolling parent, regardless of whether the child has any contact with that parent.

What Documents Should the Provider Ask for When Enrolling the Child?

Ask for all legal documents affecting the custody of the child. If a custody order from a court is in effect, the provider should ask for and keep a photocopy of the court order. Also ask for

¹ Cal. Code Regs, tit. 22, § 102421c); Cal. Welf. & Inst. Code §§ 305, 306(a).

photocopies of any protective or restraining orders relating to the child, the enrolling parent, or other family members. In some counties a list of these documents can be viewed online. You may also want to ask for a photocopy of the child's birth certificate. Ask all enrolling families these same questions so that no family feels singled out. Assure families that all the information and documents will be kept confidential.

Emergency Cards and Authorization Cards

Every child care program must keep an "[emergency card](#)" for each child.² This card, with the signature of a parent or guardian, lists contact information for each parent or other person who may be called in an emergency. It also sets out contact information for the child's health care providers and insurance information.

Also ask the parent (or authorized representative, who is someone acting in the parent's place, like a guardian or foster parent) to fill out an "authorization card." The card should list the child's name, address, birth date, and date of admission to the program; contact information (name, address, phone numbers) of both parents or other person/s responsible for the child; others to be called in an emergency; health care providers, and persons who may pick up the child from the program. Community Care Licensing has a form that providers may use, or providers may make their own form.

Under licensing regulations child care centers [must keep a list of people](#) whom the parent authorizes to pick up the child.³ This regulation does *not* apply to family child care homes, but the Child Care Law Center strongly recommends that family child care providers also keep on file such "authorization cards," as a "best practice." Ask parents to update these cards regularly, as the circle of people available to pick up a child may change. Until you become acquainted with people listed on these cards you should ask to see photo identification when one of them picks up a child.

² Cal. Code Regs. tit. 22, § 102417(g)(7).

³ Cal. Code Regs. tit. 22, § 101221(b)(5).

You might consider obtaining photos of the people authorized to pick up the child and keeping the photos with the authorization card. Being able to refer to a photo is especially important for families affected by domestic violence. Abusers sometimes try to pick up children by claiming to be one of the people whom the parent with custody has listed as having permission to take the child.

At the time of enrollment explain that the child will not be released to anyone *not* listed on the authorization card unless that person can produce a written, dated request signed by the parent.

What If the Enrolling Parent Does Not Authorize the Other Parent to Pick Up the Child?

During the enrollment process, try to get a very clear understanding of the parental rights of each parent. If only one parent enrolls the child, explain to that parent that unless a court order states otherwise, you must release the child to either legal parent. However, an unmarried father who has not established paternity is not a “legal” parent (see below).

What If a Custody Problem Comes Up After the Child Is Already Enrolled?

At the time of enrollment ask the parent to let you know if a custody problem comes up later, explaining that significant changes in the family situation affect the child’s needs and your responsibilities to the parent(s). If you become aware that court proceedings concerning a child are underway or might be started, remind the parent to share copies of any court orders.⁴

Ask the parent who drops off and picks up the child whether the parent has any concerns that an unauthorized person might try to pick up the child, and if so, the name and relationship to the child of that person. If you think that the custody dispute might cause a problem for your

⁴ In California you can consult the Office of Family Court Services, Court Facilitator’s Office, or Family Dispute Resolution Services in Superior Court to learn the status of a custody order. Information about Superior Court in each county is on the California court system at courts.ca.gov.

program, ask the parents to provide a written agreement and schedule about who will pick the child up on what days.

Upon arrival at the child care, visiting parents must show identification and be respectful of the children’s routines and programmed activities.⁵ Child care providers may refuse entry to a parent whose behavior presents a risk to the children.⁶

What Kind of Custody Arrangements Might Parents Have?

Parents who are married have equal custody rights.

When parents are not married or are separating or divorcing, the law makes a distinction between *legal* and *physical* custody. Both kinds of custody can be either *joint*—both parents have equal rights, or *sole*—only one parent is entitled to that type of custody. A court can change custody rights at any time.

Ask for any court papers dealing with custody when the child first enters care. On a regular basis, remind all parents or guardians of children in the program to give you copies of any new court order that govern custody.

What Is *Legal* Custody?

Legal custody is the right and responsibility to make decisions relating to the health, education, and welfare of a child. Usually, a parent with legal custody is authorized to decide whether the child will enroll at a family child care home or center.⁷

⁵ Cal. Health & Safety Code § 1596.857(a).

⁶ Cal. Health & Safety Code § 1596.857(g).

⁷ Cal. Fam. Code §§ 3003, 3006.

A parent with legal custody has the right to get information from a provider about his/her child, including the child's records, and has the right to inspect the child care facility without advance notice during the child care's normal operating hours while the child is in care.⁸ Parents with joint legal custody share these rights and make decisions about the child together.⁹

What Is *Physical*/Custody?

Physical custody is the right and responsibility to supervise and reside with a child, subject to the rights of the other parent to visitation.¹⁰ When parents have joint physical custody, the child lives with both parents in their separate homes, for about the same amount of time.¹¹

What Rights Do the Parents with Sole Physical Custody Have?

As a rule, a parent with sole physical custody has the right to prevent the other parent (the noncustodial parent) from picking up the child or from visiting the child at the child care outside the noncustodial parent's visitation hours.

The parent with sole physical custody should give the provider a written request not to allow the child to leave with the noncustodial parent, or visit with the child outside the noncustodial parent's visitation hours, and show the provider a copy of the court order.

To avoid any confusion about what the court orders says about visitation and to help protect the provider against liability, the Child Care Law Center recommends that the provider keep a photocopy of the court order on file.

⁸ Cal. Fam. Code § 3025.

⁹ Cal. Fam. Code § 3003; Cal. Health & Safety Code § 1596.857(a).

¹⁰ Cal. Fam. Code § 3007.

¹¹ Cal. Fam. Code § 3004.

What Is *Joint* Custody?

Legal and physical custody can be held jointly between parents even if they are not married. This means that the child lives with both parents in their separate homes for about the same amount of time, and both parents share decisions about a child. This shared authority can be based on a court order or the parents' informal agreement. All custody rights can be changed by a court order.¹² Parents can also have only joint physical custody or joint legal custody.

May a Parent without Physical Custody Visit the Child Care Program?

Yes. A parent with joint legal custody but without physical custody still has a right to view child care records about the child, like records of illness, injury reports, or notes from parent-provider conferences.¹³ They also have the right to inspect the child care setting without advance notice during normal operating hours while the child is present.

What Kinds of Custody Arrangements Might Non-Parents Have?

Sometimes people who are not the child's parents may have custody or visitation rights. A court may place a child in the custody of a non-parent through a proceeding to appoint a guardian.¹⁴

Or, if parents are unable or unwilling to care for a child, someone else concerned about the child, like a grandparent, might ask a court for custody and be appointed the child's guardian.¹⁵

A guardian has both legal and physical custody; in this case the parents have no right to custody, although they may have visitation.¹⁶ Sometimes if a child is at risk of harm from a

¹² Cal. Family Code § 3022.

¹³ Cal. Code Regs. tit. 22, § 101221(e).

¹⁴ Cal. Probate Code § 1514.

¹⁵ Cal. Probate Code § 1510(a); Cal. Family Code § 3041.

¹⁶ [Cal. Probate Code §§ 1514\(a\)-\(b\), 2108\(a\)](#).

parent and no family member is available or suitable to be a guardian, the child protective services agency will ask a court to place the child in foster care.¹⁷ In this event the foster parent has physical custody, and often a biological parent still has some parental rights. Again, ask the foster parent to give you a photocopy of the court order.

What Are the Custody Rights of an Unmarried Father?

An unmarried father's rights depend on whether his paternity has been legally established. If he has *not* established paternity he may not pick up the child from child care without authorization from the mother or other person with custody. If his paternity *is* established he and the mother have equal custody rights unless a court order says otherwise.

If you are not sure about the child's relationship to an unmarried father, ask for a copy of the birth certificate that states he is the father or ask for a written, signed statement from both parents stating he's the father.

May Someone Not Listed on the Authorization Card Ever Pick Up a Child?

Yes, *but only if* that person has written permission with current date from a parent who has physical custody of the child. The written authorization may but does not have to be on paper; it may also be by e-mail or text message.

May Emergency Medical Personnel Remove the Child from the Child Care Setting?

Not without a parent's consent. A parent's signature on the emergency card that every family must complete authorizes you to consent to emergency medical treatment for the child.¹⁸ However, the required emergency card does *not* authorize paramedics or other health

¹⁷ [Cal. Welf. & Inst. Code §§ 325, 361.2-3.](#)

¹⁸ Cal. Code Regs. tit. 22, § 102417(g)(7). However, "a child whose authorized representatives adhere to a religious faith that practices healing by prayer or other spiritual means shall not be required to meet the requirements of this section" if they inform the program of the child's health history and sign a statement accepting responsibility. Cal. Code Regs. tit. 22, § 101220(f).

professionals to remove a child from the child care setting. The Child Care Law Center recommends that the provider obtain written consent from the parent to release to paramedics or other health professionals in emergency situations.

May a Provider Release a Child to an Older Sibling or Other Child?

California law does not directly answer this question. The Child Care Law Center suggests that you either pick an age below which you will not release a child to a sibling or other child or make an individual judgment in each situation, considering at least

- age of the child being picked up
- distance the child and sibling have to travel
- time of day
- safety of travel route home
- age and maturity of the older child

The same policies on written authorization, signing the child out, etc., should apply to an older child as apply to other authorized persons.

May a Provider Release a Child without Supervision?

Again, there is no clear-cut answer. A parent may be able to authorize release of a school-age child unsupervised if the parent grants written permission. You may want to develop a form that releases you from any liability once the child, according to the parent's written instruction, leaves the program unsupervised.

What if an Unauthorized Person Demands to Take a Child from Child Care?

The starting point for the answer is that your first obligation is *always* to protect the well-being of the children in your care.¹⁹ Resist the unauthorized person's demand to leave with the child,

¹⁹ Cal. Health & Safety Code § 1597.467 & .52.

to the extent you can do that without risking your well-being and safety and that of the children in your care. Above all, remain calm.

Contact the custodial parent to inform the parent about the unauthorized person's demand. If possible, prevent the unauthorized person from entering the child care. Beyond these steps, your knowledge of the family situation and the immediate circumstances (like whether you are the only adult present) will likely guide your response.

If the unauthorized person cannot be kept physically away from the child care setting, ask the person for photo identification. Explain the program's rules on release of children and that the rules apply to everyone. Call the police if possible and if you feel threatened.

If the unauthorized person succeeds in leaving with the child, immediately write down as detailed a description of the person as you can as well as a description and license plate number of any vehicle. Immediately call the police.

What If a Parent or Authorized Person Wants to Pick Up a Child but Appears Intoxicated?

You must balance a parent's right to take a child from care with concerns about the child's safety. It may be helpful to have written procedures in place ahead of time that are part of the parent-provider contract or parent handbook, stating that if an intoxicated adult arrives to pick up a child you will contact other authorized persons to pick up the child instead. The law gives you the right to deny access to anyone who "presents a risk to the children present."²⁰

You might keep a notebook to record instances when you believe that a parent or other authorized person has come to pick up a child while under the influence of alcohol or other drugs. This record will help you express your concerns in a clear, objective manner. Discuss each incident with the parent to make sure that something else—e.g. disability, medication, or illness—doesn't explain the behavior.

²⁰ Cal. Health & Safety Code § 1596.857(g).

If you think the adult poses a risk to the child or if the child expresses concern you can take the following steps:

- Politely try to delay the parent's departure using conversation or offers of food or beverage
- Give the intoxicated adult a copy of the written policy and explain the concern
- Contact the other parent if that parent is authorized to take the child
- Contact other authorized persons
- Call the police or child protective services
- If forced to release the child, call the police as soon as possible.

What If a Law Enforcement Officer or Child Welfare Worker Wants to Talk to or Take a Child?

If any government official asks to speak to a child or wants to take a child away from the child care setting, insist on seeing the official's photo identification and write down the official's name and badge number. Keep phone numbers handy for the police and child protective services, and call the relevant agency to confirm the official's authority.

The official, in order to inform the parent or guardian of the child's removal from care, may ask for the address and phone number of the parent or guardian. In most cases a police officer's or child welfare worker's request to speak to the child will be due to allegations of serious abuse or neglect that appear to place the child in danger.

What If There Has Been Domestic Violence and There is a Restraining Order Against One of the Parents?

Domestic violence is abuse by a family member, intimate partner, or household member. A restraining order or temporary restraining order (TRO) forbids a person who has committed

abuse from contacting or coming near the protected person and his/her children.²¹ A restraining order can also forbid an abuser from coming within a certain distance of a child care program. It may include temporary custody and visitation provisions.²² The abuser can be arrested if she/he doesn't follow the rules of the restraining order.

Ask families whether any court orders, including restraining orders, affect who can contact and pick up the children. Carefully read the order and make sure you understand what is and is not allowed, and check the dates of the order to make sure it's enforceable. If necessary, ask the parent who obtained the order to explain it. Make sure a parent with an order has given a copy to the police. If the parent authorizes it, you may contact the local police to tell them about the order and the child's enrollment in a family child care home.

If someone who is restrained from coming to the child care home or from contacting or coming near a child tries to do so, assess the situation and immediately call the police. Try to prevent the person from entering the premises or taking the child, if it is possible to do so safely. Have a safety plan for your child care program and share it with your staff. Your plan should include who will lock the door, call the police, and keep the children occupied. The most important thing is to keep yourself and the children safe.

Conclusion: Know the Law About Who May Pick Up a Child from Child Care

- Only parents, legal guardians, and people who have been authorized in writing by the parent with physical custody may pick up a child from child care.
- If an unauthorized person or a person claiming to be a parent demands to take a child from child care:
 - Check your enrollment forms to see if they are authorized, and if you have custody information regarding the child;
 - Ask for the person's name, photo ID, and his/her relationship to the child;

²¹ Cal. Family Code §§ 6240 *et seq.* (governing emergency protective orders) and §§ 6300 *et seq.* (governing protective orders and other domestic violence prevention orders).

²² See DV-130, Restraining Order After Hearing (CLETS) (Form Adopted by the Judicial Council of California).

- Explain that only people with written authorization from the parent with physical custody may pick up the child.
- Law enforcement and child welfare workers may take temporary custody of a child in your care. Get the official's name and badge number and call the police or child welfare agency to confirm the official has authority to take the child.
- You may refuse entry to any person you feel whose behavior presents a risk to the child.
- If you know a restraining order is in place against the person trying to take the child, try to keep the person from leaving with the child (if you can do so safely), and call the police.

© Child Care Law Center 2021



Permission to reproduce, transmit or disseminate this information may be requested by mail or email: info@childcarelaw.org

This publication is intended to provide general information about the topic covered. It is made available with the understanding that the Child Care Law Center is not engaged in rendering legal or other professional advice. We believe it is current as of December 2021 but the law changes often. If you need legal advice, you should consult an attorney who can specifically advise or represent you.