

# Domicile for Public School Enrollment Under Joint Custody in NC

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**It's back to school season and our social media feeds are flooded with families posting photographs of bright-eyed children holding Pinterest inspired chalkboard signs.**

But, we would be remiss to not have a conversation about what "back to school" means for parents who no longer find themselves and their children in an intact family.

## **Domicile for Public School Enrollment in North Carolina**

For most public school systems in North Carolina, enrollment entitlement is determined by the "domicile" of the child. Domicile has been interpreted to have a different meaning from "residency," but not every county's policies are clear on how domicile will be determined for children who have two homes. What is clear is that in North Carolina a parent has to have legal custody of a minor child to make any decisions about that child's school enrollment.

Where the clear lines stop and the gray area begins, however, is when a court order provides for joint custody—legal and physical custody to both parents. A review of the policies of several counties reveals a myriad of approaches to determining where a "joint custody child" is domiciled and what rights the parents have to enroll the minor child in school. For example, one North Carolina county provides that domicile of a student is presumed to be the domicile of the parents, legal guardian, or legal custodian. That county's policy further states that domicile of a child with parents living in separate homes is determined by the domicile of the parent with physical custody, but the county allows parents with joint physical custody to jointly agree on which parent's domicile will be the child's domicile. In contrast, another county's policy has a similar definition of domicile which makes it clear that the parent with primary physical custody will be the parent whose domicile controls, but the policy doesn't address what happens when physical custody is equal and shared.

## **Planning to Address Enrollment**

Why does domicile matter? When a child's parents live in two separate counties and there is a question as to where the child is entitled to be enrolled in public school, the policies of each individual county will apply to the child. Thinking through and being aware of these policies and nuances can be imperative to avoid a legal battle or unintended consequence when dealing with a minor child's enrollment in school when the child's parents live in separate households in different counties.

In general, how a court order is worded regarding legal custody and physical custody can make a world of difference. A Court Order or Parenting Agreement needs to be clear and track the policies of the public school systems in the counties where the parents live to ensure that enrollment in school does not become an emergency issue on the eve of a new school year.

### **What If We Failed to Address Enrollment in Our Court Order or Parenting Agreement?**

Even if you fail to meet the domicile requirement or adequately address the issue in your Order or Agreement, your child may be able to attend public school in a county other than where the child is technically domiciled. Many North Carolina counties have now adopted a program which allows a student domiciled outside of the district to attend public schools by application and payment of tuition. Under these programs, the parents must apply to the out-of-district county and request enrollment based on the payment of tuition. The superintendent and the board of education have discretion to determine whether to admit the child as an out-of-district student, make the school assignment within the county, and set the rate of tuition. Each county individually sets tuition and it certainly varies from county to county based on school population enrollment and cost per child to attend such schools.

### **Continued Tuition Payment**

If a family elects to enroll a child in school through the payment of tuition prior to a separation and divorce, the question then turns to whether the court can order a parent to continue paying the tuition obligation after separation as part of a custody and child support order.

In 2017, the North Carolina Court of Appeals, in Smith v. Smith, considered the issue of whether a trial judge could require a parent to pay private school tuition. At issue was whether a specific showing that the child needs the advantage offered by private school is required or if the course of conduct of the parties during the marriage is sufficient. The North Carolina Court of Appeals determined that a trial judge could in fact order payment of private school tuition noting the factors considered in Smith v. Smith:

- The parents' combined monthly incomes exceeded \$25,000.00;
- Private school was part of the children's accustomed standard of living;
- The parent whose obligation was being considered was capable of paying the tuition; and,
- The parents had previously agreed that their children would be educated in private school.

What North Carolina courts have not specifically addressed is whether a judge can require a parent, as part of a support obligation, to pay tuition for a minor child to attend an out-of-district public school. It appears that in Smith v. Smith, the court's decision addressing private school tuition, was influenced, in part, by the fact that the incomes of the parties allowed the courts to look at the reasonable needs of the minor child instead of using strict North Carolina Child Support Guidelines, which do not examine the specific needs of the child without a request for deviation or extraordinary expense. That said, where the issue has not been addressed by North Carolina appellate courts, there is still an argument to be made that the ability of a child to continue to attend an out-of-district school constitutes a basis for deviation or an extraordinary expense.

### **Conclusion**

As we tell our children, it is important to do your homework! Understanding the nuances of school enrollment requirements and being prepared for the implication of tuition payment are important factors when addressing the education of your child and your financial obligations in the event of divorce.

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