

## **IRFLP 717 Supervised Access to Children**

### **Idaho Rules of Family Law Procedure Rule 717. Supervised Access to Children.**

A. Coverage. This rule shall apply in cases, other than those brought under the Child Protective Act and Juvenile Corrections Act, in which the court orders supervised access to children.

B. Purpose. This rule sets forth the duties and obligations for providers of supervised access to children. The best interest of children is the paramount consideration in deciding the manner in which supervision is provided.

C. Scope of service. These standards govern supervised access. Each court may adopt local court rules that are not inconsistent with these standards and which are necessary to implement these standards.

D. Definitions.

1. Supervised Access is any contact between a supervised party and one or more children in the presence of an approved provider.

2. Provider includes any individual or entity appointed to provide supervised access between a supervised party and one or more children. Although accountable to the court, a provider is not a party to the court proceeding.

3. Exchange Supervision/Supervised Transfer is supervised access designed to facilitate the movement of one or more children between persons with the right to access those children. In this role, the provider waits at a neutral location and makes the exchange. Objective reports may be filed with the court regarding the behavior of the parties and the well-being of the child. Exchanges may take place at a variety of locations and times. The length of time between the first half of the exchange between parties and the return half may fluctuate between several hours or several weeks.

4. Non-Professional Provider is any provider who is not paid for providing supervised access services.

5. Professional Provider is any provider paid for providing supervised access services.

6. Therapeutic Provider is a professional provider who is also a licensed mental health professional (including a psychologist, licensed master social worker, licensed professional counselor, marriage and family therapist, or an intern working under direct supervision of one of these professionals) and is ordered to provide Therapeutic Supervision.

7. Therapeutic Supervision includes the provision of supervised access services between the child and supervised party, as well as therapeutic intervention and modeling to help improve the parent-child interactions. A therapeutic provider may, when ordered, make evaluations and recommendations for further parent-child contact.

8. Supervised Party refers to a person who is authorized to have contact with a child only by supervised access or who is subject to an order for supervised exchanges/transfers.

E. Court control of supervised access. The court shall make the final decision as to who the provider will be, the manner in which supervised access is provided, and any terms or conditions thereof. The court may consider recommendations by the attorney or guardian ad litem for the child, the parties and their attorneys, family court services staff, evaluators, therapists, and reports submitted by providers of supervised access services.

F. Qualifications of providers.

1. Unless otherwise ordered by the court or stipulated to by the parties, all individuals providing supervised access must:

a. Be 21 years of age or older;

b. If transporting a child, have proof of minimum automobile insurance, possess a valid current driver's license, not have been convicted of or pled guilty to driving under the influence of alcohol, drugs or other intoxicating substances within the last five years, and utilize an approved child car seat and/or seat belt for the child as required by law;

c. Have no current or past civil, criminal, or juvenile protection or restraining order against him or her regarding a child involved in the case or a party to the case;

d. Have no current ex parte domestic violence protection order against him/her;

e. Have no current or past domestic violence protection order against him/her entered at/after an adjudicatory hearing held after notice to him/her;

f. Have no current or past criminal "no contact" order against him or her;

g. Never have been a supervised party; and

h. Communicate in a language that the non-custodial party and the child understand or have a neutral interpreter over the age of 18 present to assist with communication, including for the hearing-impaired.

2. In addition to the above, all professional providers must comply with the provisions of [Idaho Court Administrative Rule 47](#) [1] regarding Criminal History checks. A denial, either conditional or unconditional as defined by [I.C.A.R. 47](#) [1] precludes employment as a supervised access provider.

G. Education and training of providers. When the court orders supervised access, each court must make available to the providers the terms and conditions of supervised access under subsections N and O and the legal responsibilities and obligations of a provider as provided in sections P, Q and R. In addition, effective January 1, 2005, the professional provider of supervised access must have completed 13 hours of training in supervised access including the following topics:

1. The role of a professional and therapeutic provider.
2. Child abuse reporting laws.
3. Record-keeping procedures.
4. Screening, monitoring, and termination of access.
5. Developmental needs of children.
6. Legal responsibilities and obligations of a provider.
7. Cultural sensitivity.
8. Conflicts of interest.
9. Confidentiality requirements and limitations.
10. Dynamics of domestic violence, child abuse, sexual abuse and substance abuse.

11. Techniques for dealing with high conflict or difficult situations.

12. Effects of separation, divorce, on children and their parents.

13. Local court practices and relevant state law.

14. Maintaining a neutral role.

15. Ethical principles involved in supervision of access.

H. Safety and security procedures. All providers must make reasonable efforts to ensure the health, safety and welfare of the child, custodial and non-custodial parties, and providers during supervised access. In addition, professional providers must do all of the following:

1. Establish, with the assistance of the local law enforcement agency if possible, a written protocol that describes what emergency assistance and responses can be expected from the local police or sheriff's department. The protocol should specifically address procedures to follow in the event a child is abducted during the process of supervised access.

2. Establish and set forth in writing minimum safety and security procedures and inform the parties of these procedures prior to the commencement of supervised access;

3. Obtain prior to providing services:

a. Copies of any protective orders and no contact orders.

b. Current court orders pertaining to the child.

c. A report of any written records of allegations of domestic violence or abuse.

d. In the case of a child's chronic health condition, an account of his or her health needs.

4. Conduct a comprehensive intake and screening to assess the nature and degree of risk for each case. The procedures for intake should include separate interviews with the parties before access begins. During the interview, the provider shall obtain identifying information of the parties and the child(ren) and explain the reasons for temporary suspension or termination of access as specified

subsection(s) of this section. If the child is of sufficient age and capacity, the provider shall include the child in an age-appropriate orientation prior to the first supervised access. The provider has the discretion to conduct an orientation of the process with the child separate and apart from the parties;

I. Ratio of children to provider. A professional provider may determine the appropriate ratio of children to provider for supervised access based on:

1. The degree of risk present in each case.
2. The nature of supervision required in each case.
3. The number and ages of the children to be supervised during a visit.
4. The number of people having contact with the child during access.
5. The duration and location of supervised access.
6. The experience of the provider.

J. Conflict of interest—non-professional providers. When appointing a non-professional provider the court should evaluate the provider’s ability to act independently of the supervised person and in a neutral and unbiased fashion.

K. Conflict of interest – professional providers. All professional providers must maintain an engaged but unbiased role. Generally, discussions between a provider and the parties outside the actual supervision situation should be limited to arranging access and providing for the safety of a child. Unless otherwise ordered by the court or stipulated to by the parties, professional providers shall not:

1. Be financially dependent on the person being supervised.
2. Be an employee of or work for the supervised party in a capacity other than providing supervision.
3. Be otherwise employed in another capacity in a case involving the same parties.
4. Be a close relative of, or be involved in or have had an intimate relationship with, the supervised

party.

L. Maintenance and disclosure of records.

1. The professional provider must keep, and it is recommended that all providers keep, a record for each case, including the following:

a. A written record of each contact, including the date, time and duration of the contact

b. Who attended.

c. A summary of activities.

d. Actions taken by the provider, including any interruptions, temporary suspension or termination, and reasons for these actions.

e. An account of critical incidents, including physical or verbal altercations and threats;

f. Violations of protective or court visitation/access orders.

g. Any failure of the parties to comply with the terms and conditions of the supervised access order.

h. Any incidents of abuse.

2. Records and reports shall be limited to facts, observations and direct statements made by the parties and/or the children, except where a therapeutic provider has been authorized by the court to evaluate and make recommendations regarding the adult/child interactions. All contacts by the provider in person, in writing, or by telephone with any party, the children, the court, attorneys, mental health professionals, and referring agencies must be documented in the case file.

3. If ordered by the court, or requested by either party or the attorney for either party or the attorney for the child, a report about the supervised access must be produced and sent to all parties, their attorneys, the attorney for the child, and the court. Such reports shall not include recommendations regarding future access unless ordered by the court and submitted by a therapeutic provider.

4. Information gathered and observations made as a result of appointment as a provider shall not be

disclosed to anyone except as required by law, court order, or upon consent of both the parties.

M. Evidentiary privilege. Communications between parties and providers of supervised access are not protected by any privilege that would not otherwise apply.

N. Delineation of terms and conditions. The provider is responsible for following all of the terms and conditions of any supervised access order. The provider shall:

1. Monitor conditions to reasonably ensure the health, safety and welfare of the child.
2. Follow the frequency and duration of the access as ordered by the court.
3. Remain neutral.
4. Ensure that all contact between the child and the supervised party is within the provider's hearing and sight, and that discussions are audible to the provider.
5. Communicate in a language that the child and non-custodial party understand.
6. Allow no derogatory comments about another party, his or her family, the caretaker, the child or the child's siblings.
7. Allow no discussion of the court case or possible future outcomes.
8. Allow neither the provider nor the child to be used to gather information about another party or a caretaker, or to transmit documents, information, or personal possessions.
9. Allow no spanking, hitting, or threatening of the child.
10. Allow no access to occur while the supervised party appears to be under the influence of alcohol or illegal drugs.
11. Allow no emotional, verbal, physical, or sexual abuse.

12. Ensure that the parties follow any additional rules set forth by the provider or the court.

13. Allow no other person to have access, unless such access has been specifically approved by the court or by all parties in writing.

O. Safety considerations for cases involving sexual abuse. All providers must adhere to the following additional terms and conditions in cases involving allegations of sexual abuse:

1. Allow no exchanges of gifts, money or cards.

2. Allow no photographing, audio taping, or videotaping of the child.

3. Allow no physical contact with the child that appears inappropriate or sexualized, such as lap sitting, hair combing, stroking, hand holding, prolonged hugging, wrestling, tickling, horse-playing, changing diapers or clothes, or accompanying the child to the bathroom.

4. Allow no whispering, passing notes, hand signals, or body signals that appear inappropriate or sexualized.

5. Allow no supervised access in the location where the alleged sexual abuse occurred.

P. Responsibilities and obligations of a provider. All providers of supervised access must:

1. Inform the parties before commencement of supervised access that while communications are confidential, no privilege exists;

2. Report suspected child abuse to the appropriate agency, as required by law, and inform the parties of the provider's obligation to make such reports;

3. Comply with and enforce the terms of this rule and the court's order; and

4. Suspend or terminate access as appropriate under subsection S.

Q. Additional responsibilities of professional providers. In addition to the preceding responsibilities and obligations set forth under subsection P, the professional provider must:



1. Prepare a written contract that informs each party of the terms and conditions of supervised access and that is signed by all parties before the commencement of supervised access.
  
2. Review custody and visitation/access orders relevant to the supervised access.
  
3. Implement an intake and screening procedure under subsection H.4.
  
4. Develop a written protocol for suspension or termination of access services.
  
5. Provide general information to the parties about how they may be referred back to the court when access has been suspended or terminated.

R. Discharge of the supervisor.

1. If a previously named provider cannot accept the appointment for whatever reason, that provider shall within seven days of the notice of appointment, or receipt of the notice to the supervisor, or order, file a declination of appointment. A provider need not give a specific reason for declining an appointment to provide supervised access.
  
2. If at any time after the acceptance of the appointment or before providing supervised access services the provider is no longer willing or able to act as a supervisor, the provider shall notify the court by filing a written resignation with the court and mailing a copy to the parties and their attorneys.
  
3. Upon motion of a party, or the court on its own motion, a supervisor may be removed for failure or inability to comply with this rule, the conditions of appointment or because the services are no longer needed.
  
5. Temporary suspension or termination of supervised access. All providers must make reasonable efforts to provide a safe environment for all participants. Access may be temporarily interrupted, rescheduled at a later date, or terminated if a provider determines that the rules for the access have been violated; the child has become acutely distressed; or the health, safety or welfare of the child or provider is at risk. When suspending or terminating access, providers shall:
  1. Notify the court and state the reasons for suspension or termination of supervised access in writing, and provide copies to all parties, their attorneys, and any attorney for the child; and
  
  2. Record all interruptions or terminations of access in their case file or, in the case of non-professional providers inform the court of such interruptions or terminations of access.

Comments: This Rule is intended to establish the framework for court-ordered supervised access to children. Each court is encouraged to make available to all providers of supervised access to children informational materials about the role of the provider, the terms and conditions of supervised access and the legal responsibilities and obligations of a provider. In addition to the extent dictated by local needs and conditions, Courts may develop local rules not inconsistent with this rule to govern supervised access to children. Courts should consider the following best practices in ordering supervised access:

1. Generally it is not in the best interests of children to have supervised exchanges/transfers occur at law enforcement agencies. Courts should look for other neutral locations for exchanges/transfers.

2. At the current time, the rule does not impose requirements for the amount of training or for the timing of training. Judges should ensure that professional providers' training is recent and relevant to the role they will play in any particular case.

3. No new evidentiary privilege is created by this rule. Communications of professional providers may be privileged under other provisions of Idaho law. Even where no privilege applies, providers should maintain appropriate confidentiality regarding the case except when ordered by the court, subpoenaed to produce records or testify in court, requested by a mediator or evaluator in conjunction with a court-ordered mediation, investigation or evaluation, required by child protective services, requested by law enforcement or necessary to report suspected child abuse to the appropriate agency as required by law.

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**Links:**

[1] <http://www.isc.idaho.gov/icar>