



Grandparent's Visitation Guide



Note: This guide is intended to provide general legal advice regarding what to do if you are a grandparent seeking visitation with your grandchild(ren). If you need specific legal advice regarding your situation, please contact an attorney.

Do I have a right to visitation with my grandchild(ren)?

Answer: No.

Visitation with your grandchild(ren) is not a guaranteed right. The reason for this is that parents have a fundamental right to make decisions concerning the care, custody, and control of their children, which includes who can visit with their children. Some cases that support this idea are: *Troxel v. Granville*, 530 U.S. 57, 120 S. Ct at 2054, 147 L.Ed.2d 49 (2000); *Leavitt v. Leavitt*, 142 Idaho 664, 132 P.3d 421 (2006). See also Idaho Code 32-1010.

However, if a parent or guardian is not letting you spend time with your grandchild(ren), there are things you can do to try to see them.

Option 1: Try to Speak with the Child(ren)'s Parents

If you can, try to work out visits with your grandchild(ren)'s parents. Tell them how you feel and that you want to be a part of your grandchild(ren)'s life. If the parents are willing, you can also try using a mediator to work out a visitation plan. Do your best to be respectful and civil toward your grandchild's parents even if you are not getting along.

However, if this does not work, you may have to go to court in order to seek grandparent visitation. Please see Option 2 below.

Who Can Ask the Court for Visitation Rights?

In Idaho, a court can grant reasonable visitation rights to grandparents or great-grandparents only. See Idaho Code Section 32-719.*

**Legal Note: Although this provision appears to only apply to divorce actions because it is located within Chapter 7 of Title 32 of the Idaho Code, titled "Divorce Actions", the Idaho Supreme Court has recently stated that Idaho Code Section§ 32-719 is not limited to divorce proceedings, or where families are not intact, and that grandparents can petition for visitation rights at any time. See Nelson v. Evans, 166 Idaho 815, 464 P.3d 301, 306 (2020).*

Option 2: File a Motion to Intervene or a Petition for Visitation in Court

If you can't work out an agreement with the parents, you can ask a court to give you visitation time through an order.

Option 1: Motion to Intervene (Motion for Intervention)

If there is a pending divorce or custody case regarding your grandchildren, you can file a Motion for Intervention (also known as a Motion to Intervene) to ask the court to allow you to participate in the case to obtain visitation rights.

Legal Tip: You can find information regarding a case online through Idaho's iCourt system here: <https://icourt.idaho.gov/>

Option 2: Petition for Grandparent Visitation

What Must I Show in Order for the Court to Order Grandparent Visitation Rights?

The court can only order visitation for grandparents or great-grandparents where the grandparent or great-grandparent has shown (or proven), by clear and convincing evidence, that visitation is in the best interests of the child(ren). See Idaho Code Section 32-719; *Leavitt v. Leavitt*, 142 Idaho 664, 670, 132 P.3d 421, 427 (2006) (“clear and convincing standard of proof applies to actions brought under I.C. § 32–719”).

How Does the Court Determine the Best Interests of the Child(ren) for Grandparent Visitation?

There is no specific Idaho Code section that tells us what factors are to be considered to determine whether grandparent or great-grandparent visitation is in the best interests of the child(ren). The court will look at your relationship with your grandchild(ren) and what you’ve done to be part of your grandchild(ren)’s life. For example, some things the court may consider include:

- Do you call, visit, or spend time with your grandchild? How much time did you spend with them in the past? Did the child’s parents ask you to care for the child for extended periods of time in the past? Has the child lived with you? Have the child’s parents asked you to support the child in the past?
- Do you know what your grandchild likes to do for fun? Do you know their hobbies and interests?
- Does your grandchild enjoy spending time with you?
- Do you help your grandchild with school or try to help him or her learn?
- Do you disrupt the grandchild’s parent-child relationship with their parents?
- Do you challenge or question the grandchild’s parents’ parenting or parenting decisions to your grandchild or their parents?
- Do you make the child choose between you and his/her parents in any way?

What is “Clear and Convincing” Evidence?

Clear and convincing evidence is evidence means evidence that is more than a “mere preponderance” of evidence. This means that you must show by than just a mere majority of the evidence that grandparent visitation is in the child’s best interests. *Matter of Jenkins*, 120 Idaho 379, 383, 816 P.2d 335, 339 (1991).

How Do I Show a Relationship with My Grandchild If the Parents Will Not Let Me Visit?

You must show that you’ve made enough of an effort to try to have a relationship with your grandchild. The court may look at several things to find out whether or not you’ve done this. For example, you can do this by sending them birthday cards or gifts, writing letters or emails, or calling or texting them.

However, do not make your grandchildren feel like they have to choose between their parents and grandparents. The court wants to know that the child will not be harmed, physically, emotionally, or mentally, by visiting with you.

What If the Parents Are Strongly Against Grandparent Visitation?

The court does strongly consider what the parents’ wishes when it comes to who their child associates with and the court will consider why the parents do not want a grandparent to visit with the grandchild.

The court may also consider anything that has happened between you and the parents that might be relevant to your visitation.

Attorney Services

You may represent yourself or hire an attorney to file a petition or motion and appear with you in court. If you need help finding an attorney, contact the following organizations:

- [Idaho Legal Aid Services, Inc.](#)
- [Idaho Volunteer Lawyers Program](#)
- [Idaho State Bar Association Attorney Referral Service](#)