

MAEOP Conference Legal Training

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Road Map

1. 3rd Party Interviews with Students
2. Sunshine Law
3. Custody Matters
4. Name Changes
5. FERPA
6. Enrollment/Residency
7. The Rude Visitor
8. Questions



3rd Party Interviews

- Attorneys, Children's Division, and Law Enforcement, oh my!
- Interviews of students are governed primarily by Board Policy.
- When determining whether to allow someone to interview a student at school, the primary concerns are:
 - Student Rights
 - Parental Permission
 - Opportunity for Alternative Time
 - Disruption to the School Environment/Student's Education

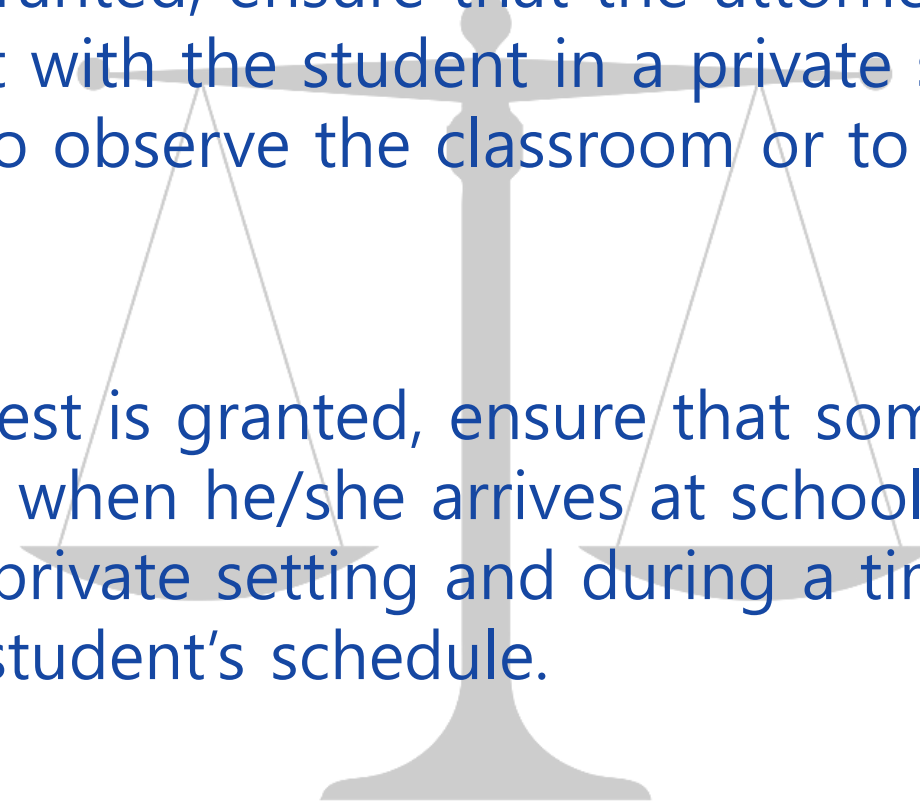
**A parent's attorney wants to visit
the parent's student at school.
Can we permit that?**



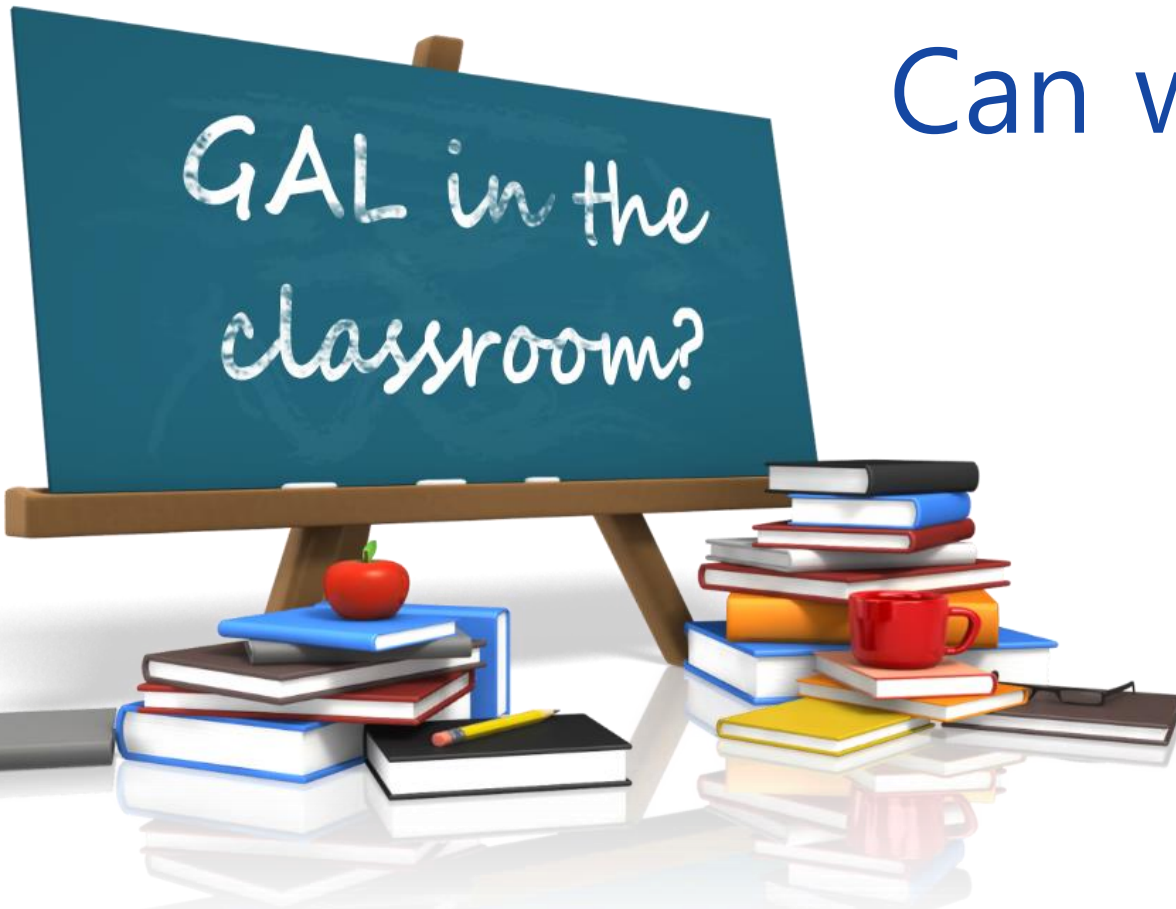
Guidance for Dealing with Attorneys

1. Attorney for a parent does NOT represent the student. First, obtain a signed FERPA release from the parent. While the attorney has not requested educational records, he/she has requested to meet with the student at school during the school day and thus there is the possibility that the student will disclose confidential student information.
2. Evaluate the FERPA release and information provided by the attorney. Evaluate whether there is a basis for denying the request (for example, the attorney could easily speak to the student outside of the school day) or whether there is a basis for granting the request (for example, the other parent has sole custody of the child and the only meaningful opportunity the attorney would have to speak to the student is at school during the school day).

Guidance for Attorneys :

3. If the request is granted, ensure that the attorney understands that he/she must meet with the student in a private setting but that he/she is not permitted to observe the classroom or to interview staff members.
 4. Finally, if the request is granted, ensure that someone verifies the attorney's identity when he/she arrives at school and that the meeting is scheduled in a private setting and during a time that would be least disruptive to the student's schedule.
- 

A GAL wants to visit the
student at school.
Can we permit that?



Guidance for GALs

1. It is permissible for the GAL to visit with the students at school during the school day, but this should be limited to when the school environment is the only meaningful opportunity for the GAL to speak to the student.
2. When a GAL requests to interview a student during the school day (or during periods of extracurricular activities), the request should be processed through the school principal (or designee) and that the principal ask for and review a copy of the court order appointing the GAL. When the GAL arrives at school for the interview, the principal (or designee) should verify and record the identity of the individual and verify that the individual is the person listed as the GAL in the court order.

Guidance for GALs

3. The interview should be conducted in a private setting and with the least disruption to the student's schedule. The GAL should work with the school to pick a time that will be least disruptive to the child's school day.
4. It is not permissible for teachers to speak with the GAL about the students unless the GAL order specifically indicates that is authorized. This will be order-specific.

Guidance for Law Enforcement

- Board Policy – Interviews, Interrogations and Removal from School
 - When law enforcement officials find it necessary to question students during the school-day or periods of extracurricular activities, the principal/designee will be present and the interview will be conducted in private.
 - The principal/designee will verify and record the identity of the officer or other authority and request an explanation of the need to question or interview the student at school.
 - The principal/designee ordinarily will make reasonable efforts to notify the student's parent(s)/guardian(s).

Guidance for Children's Division

- CD representatives may meet with students on campus if there is no other meaningful opportunity for CD representatives to speak with the student.
- The building principal (or designee) should work with the CD to arrange such meetings to be minimally disruptive to the student's schedule.
- If the student is an alleged victim of abuse or neglect, the CD may not meet with the student in any school building or childcare facility where the abuse of the student allegedly occurred.
- The principal (or designee) should verify and record the identity of any CD representatives who request to meet with a student.

The Sunshine Law



§ 610.010(6)

"Public record" is defined as:

- any record, whether written or electronically stored, retained by or of any public governmental body
- Includes:
 - Any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body;
 - Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record;



§ 610.010(6)



"Public record" does not include:

- Any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting.

So what does this really mean and why does it matter?



- General rule of thumb is that if it is being retained by the District in any way/medium, then it is a District record.
- Important for registrars and administrative assistants to understand what constitutes a District “record” so they can identify requests for the same and assist the Custodian of Records in responding to the request.
- Remember – a request for records doesn’t have to mention the Sunshine Law in order to invoke its requirements.

Sunshine Law Records Requests

- *Gross v. Parson*
 - Missouri Supreme Court case decided last month.
 - Clarified different requirements under the Sunshine Law:
 - What fees can and cannot be charged;
 - What information must be communicated when redacting records; and,
 - What information must be communicated to the requestor when records aren't immediately provided.



Custody Matters



- Parenting Plans
- Custody Orders
- Orders of Protection
- Powers of attorney

Scenario

Dad provides a divorce order stating that mom has no legal or physical custody over the children. He also hands you a signed note that says:

"My ex-wife is psycho. If you permit her to pick-up my children from school I will sue the district. You are hereby on notice."



School ≠ Court

You ≠ Judge

- Schools cannot enforce court orders, divorce decrees, parenting plans, safety plans developed by CD, etc.
- Unless a parent's parental rights have been terminated by a court, they have the same rights as any other parents to pick-up their students from school and access their student's records.



The Exceptions



1. Gut instinct: You should feel confident that you do not have to permit a parent/guardian to pick-up a student if you have a bad feeling, child looks apprehensive, etc.
2. Order of protection or restraining order directing parent not to be near child.

Now that we know the “rules” and the exceptions, let’s try a few more scenarios....



Scenario

Mom and Dad are separating. Mom gives permission for her new boyfriend to pick children up from school. Dad provides written notification that new boyfriend is not to pick up his children from school.



Can Non-Parents/Guardians Pick Up Students From School?



- YES; so long as we have permission from at least one parent/guardian.
 - The fact that one parent disagrees with the decision is not an issue that we get involved in.
- The same exceptions apply.

Scenario



Dad has provided you with a parenting plan which states that "mom's days" are Tuesday and Thursday. Mom shows up on a Wednesday to pick up their children.

Can a Parent Access their Children on Days When the Other Parent is Supposed to Have the Children According to a Parenting Plan Schedule?

- Not according to the parenting plan, BUT...
 - We are not responsible for enforcement of the plan.
- Guidance: Do not stop the parent from accessing their child on a day that is not "their day."
 - The same exceptions apply.



Scenario

Mom has a restraining order against dad, and mom has sole legal/physical custody of their daughter. Dad shows up at school to join daughter for lunch.



What Do We Do if a Parent Informs us About a Restraining Order?

- WHAT actions does the restraining order prohibit and WHO does it prevent the parent from being in contact with?
- If the restraining order only states that dad may not be in contact with mom, then it is appropriate to permit him to join daughter for lunch.
- The same exceptions apply.



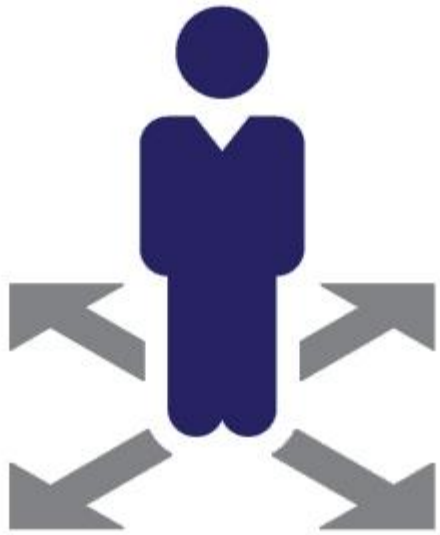


SO, what do we do with custody orders, divorce decrees, parenting plans, etc. when parents provide us with copies?

Guidance for (most) Court Documents

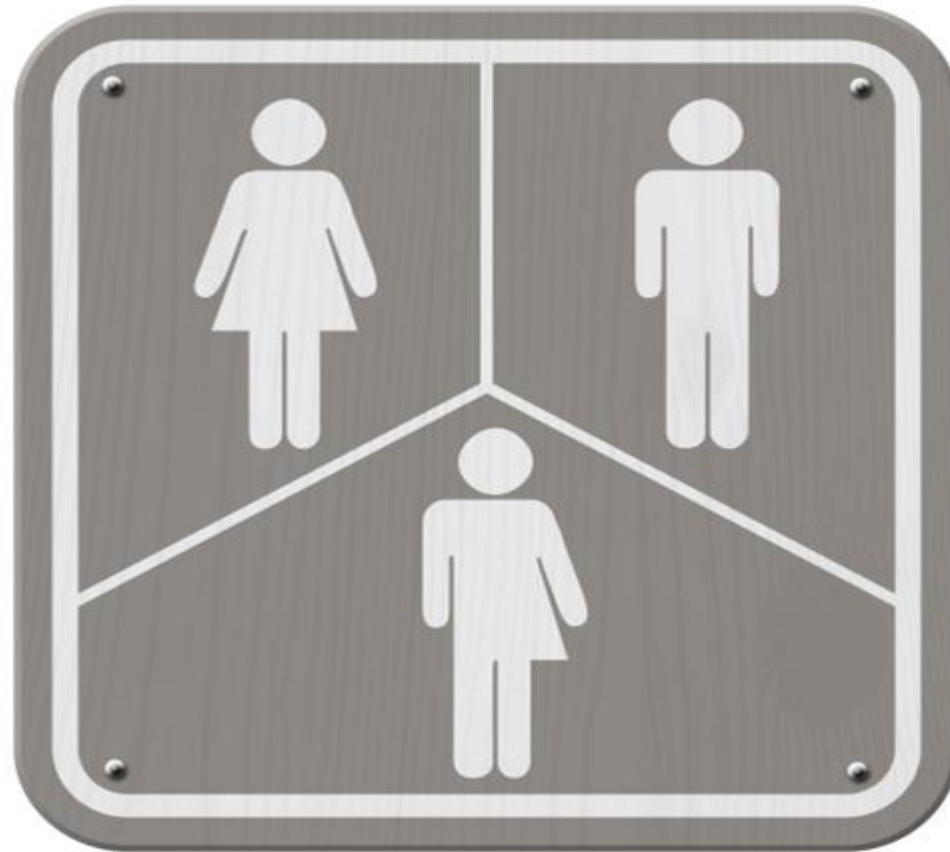
1. Thank the parent for providing the document.
2. Inform the parent that you will retain the document with the student's records.
3. If the parent asks questions about limiting the other parent's access, explain that the school district does not enforce court orders and only limits access where a parent's parental rights have been terminated.
4. Invite parent to update you if any other orders are issued or situation changes.

Guidance for Orders Terminating Parental Rights and Restraining Orders Prohibiting Access to Children



1. Thank the parent for providing the document.
2. Inform the parent that you will retain the document with the student's records and make any necessary changes in their system.
3. Inform all school personnel who "need to know."
4. Note in any applicable records.

Name Changes



Name Changes and Gender Identity

- What is the U.S. Department of Education's current position?
 - a. June 2021 Notice of Interpretation of Title IX:
 - i. *Bostock* applies to Title IX and Title IX prohibits discrimination in schools based on gender identity and sexual orientation, as a form of sex discrimination.
 - ii. The U.S. Department of Justice's Civil Rights Division agrees with that analysis.
 - b. OCR will fully enforce Title IX to include investigating claims of "individuals being harassed, disciplined in a discriminatory manner, excluded from, denied equal access to, or subjected to sex stereotyping in academic or extracurricular opportunities and other education programs or activities, denied the benefits of such programs or activities, or otherwise treated differently because of their sexual orientation or gender identity."

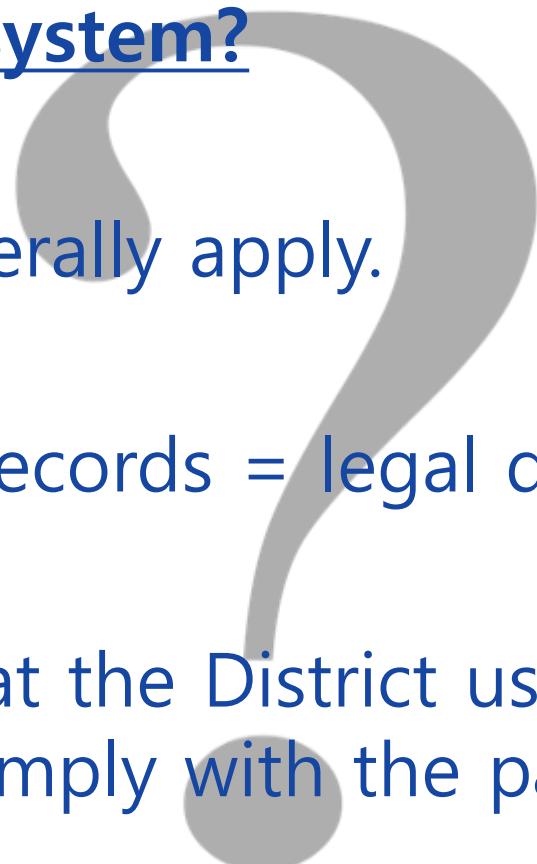
Name Changes

How do we respond to requests for name changes or the use of specific pronouns?

- a. If the request is to change the legal name on official records, then a court or administrative order will be required.
- b. For non-legal name changes, we recommend using names that don't match the student's legal name similarly to how the District would treat a nickname.
- c. With regard to pronouns, the risk is similar to decisions related to restroom and locker room use. It will be most protective to use the pronouns the parent/guardian or adult student wants used in reference to the student. However, if the parents and student disagree, and the student is a minor, other factors may result in the District complying with the student's preference.
- d. Pronouns can also be made part of an overall plan if one is created, as well as restroom/locker room use.
- e. Recommended rule to follow – Require documentation of a legal name change, and check with your building administrator and/or Central Office for other name change requests.



Name Changes

- What about when parents want to change their own name in the District's records/system?
 - a. Same rules will generally apply.
 - b. Change on official records = legal documentation.
 - c. Change in name that the District uses to refer to the parent (i.e. nickname) = comply with the parent's request.
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Family Educational Rights and Privacy Act: An Overview



FERPA: An Overview

- Federal law that protects the privacy of student educational records
 - Like HIPPA, but for student education records
- Gives parents and “eligible” students the right to inspect educational records
- Prohibits disclosure to third parties
- Enforced by Family Policy Compliance Office
 - Investigates complaints



FERPA

FERPA: Education Records Are . . .

Any information that is maintained by an educational institution which directly relates to a student.

Educational Records Include, but are not limited to:
Demographic Information
Admission Records
Grades (including student assignments)
Class Schedules and Lists
Disciplinary Records
Special Education Records
Specific Attendance Records
Health Records (for K-12)

FERPA: Educational Records Are Not . . .

Directory Information

Board Regulation 2400:
• Student Name
• Student Address
• Telephone Listing
• Parent Email Address
• Grade Level
• Participation in school activities/sports
• Weight and Height of Athletes
• Dates of Attendance
• Most Recent Previous School Attended
• Diplomas and awards received
• Photographs
• GPA

Schools may disclose Directory Information without consent of the parent or student if it has given notice of:

1. Types of information it had designated as directory;
2. The parent's right to restrict disclosure of such information; and
3. A deadline by which the parent must respond.

Note – Parents/eligible students only need to opt-out once (not annually), but if they want to rescind the opt-out then that should be done in writing.

Sole Possession of Records

Records kept in the possession of the maker (teacher, para, etc.) and are not accessible or revealed to any other person.

Once the contents of a sole possession record becomes accessible by anyone other than the maker or a temporary substitute, they become education records for purposes of FERPA.



FERPA: Who is a “Parent”?

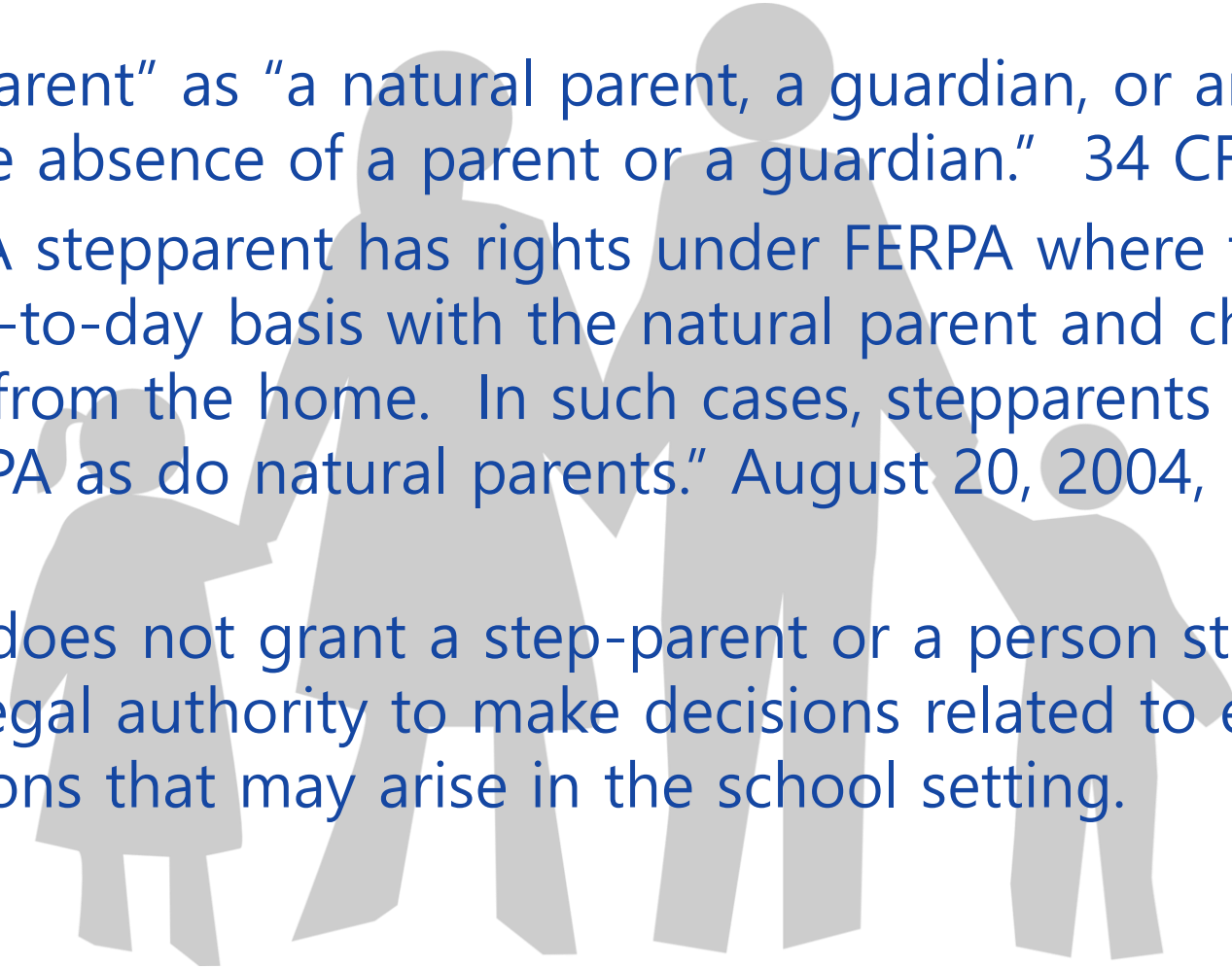
The term “parent” is defined broadly and includes the following:

1. Natural parent
2. Guardian
3. Individual “acting as a parent in the absence of a parent”



Step-Parents & FERPA

- FERPA defines “parent” as “a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.” 34 CFR § 99.3.
- FPC guidance: “A stepparent has rights under FERPA where the stepparent is present on a day-to-day basis with the natural parent and child and the other parent is absent from the home. In such cases, stepparents have the same rights under FERPA as do natural parents.” August 20, 2004, FCO Letter to Parent, p. 1-2.
- However, FERPA does not grant a step-parent or a person standing in the stead of a parent the legal authority to make decisions related to educational or healthcare decisions that may arise in the school setting.



FERPA: Who is an “eligible” student?

When a student becomes “eligible” those rights given to parents under FERPA transfer to the student.

“Eligible students” include:

1. Any student who has reached 18
2. An student granted the legal status of emancipated minor
3. Any student attending a post-secondary institution (regardless of age)



FERPA: The Right to Inspect

- Schools only have duty to allow inspection of the records; they do not need to produce records.
 - EXCEPTION: Where failure to provide copies prevents a parent or eligible student from exercising the right to inspect or review the records (e.g. distance, incarceration)
 - FERPA requires that schools comply with a request within a reasonable period of time but not more than 45 days.

What if a parent or eligible student asks for the meaning of a record...

- Schools must respond to “reasonable” requests for explanations and interpretations.



FERPA: Disclosure Prohibited

Aside from specific exceptions, a parent or eligible student must provide a written and signed consent before a school may disclose educational records to a third party.

A Valid consent must:

- ✓ Specify the records that may be disclosed
- ✓ State the purpose of the disclosure
- ✓ Identify the party or class of parties to whom disclosure may be made
- ✓ Be signed by a parent or eligible student

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Exceptions where no parental consent is required (the BIG ones)

- ✓ Directory information
- ✓ School personnel with legitimate educational interest
- ✓ Court order or subpoena (after reasonable advance notice is given to parent)
- ✓ Health or safety emergency



Exceptions to consent are permissible, not mandatory!

Limitations on Re-disclosure

- When a school discloses student information, the receiving party should be informed that the information may not be further disclosed, except when the disclosure is :
 - To the parent/guardian or eligible student
 - On behalf of the school
 - Pursuant to a court order or subpoena
 - Directory Information
- This notice is most often given when parents permit disclosure through written/signed FERPA release.



Scenario:



Mom has sole physical and legal custody of children.

Dad comes to school and asks to see the children's enrollment paperwork.

First Question:

Is Dad entitled under FERPA to see the paperwork?



YES - He is a “parent” for purposes of FERPA

- Parent means a parent of a student and includes a **natural parent**, a guardian, or an individual acting as a parent/guardian in the absence of a parent/guardian.
- So, as long as his parental rights have not been terminated, Dad can inspect the records.



Second Question:

How do you provide dad
with the paperwork?
Must you provide copies?



NO – There is only a duty to allow “inspection”



If the parent or eligible student would like copies, then schools may charge a reasonable fee (\$0.10 per page).

Third Question:

What if mom has asked you not to give dad the enrollment paperwork because he is trying to figure out where they live and wants to harm them?



Guidance:

- Inform administrator and seek decision regarding how to proceed
- Remember: FERPA is complaint driven
- It is appropriate not to comply with a request where you believe that provision of records may place children in danger



Scenario:



You receive a request for student records from social services seeking a student's attendance records, address, guardians of record, persons to contact in case of emergency, and transportation information. What, if anything, can you provide?

Questions to ask:



- Was the request accompanied by a FERPA consent signed by a parent/guardian?
- Was the request in the form of a subpoena?
- Is there any record showing that the child has been placed in the care and custody of the Children's Division?
 - If yes, then the CD is "acting as the parent" and records may be provide.
- Is this a true emergency situation?

If all of the answers are “NO”, then respond Social Services:

Most of the information that you have requested regarding the student is a confidential student education record under FERPA and the District’s Policy/Regulation. Therefore, the information cannot be provided by the District absent a subpoena or a signed and dated written consent from the parent/guardian. The student’s address is directory information, and therefore the District can provide that information to you. The District’s records show that the student’s address(es) of record for the time period of _____ through the present is/are: _____.

Scenario:

The local police department contacts the school requesting a copy of a surveillance video. The police have limited their request to a certain camera for a certain timeframe, anticipating to see two students exchanging money for drugs. The school reviews the video and determines that the video does capture that instance, but it also captures students during an uneventful passing period.



Step 1: Determine whether the video is an “Educational Record”



If the video depicts (1) a *specific incident* and (2) *involves students*, then it is an “educational record” and should generally not be disclosed under FERPA.

- If the video is not an “educational record”, then it can be provided to the authorities without violating FERPA
- If the video is an educational record, then . . .

Step 2: Determine whether an exception applies

- Is there an emergency situation that would risk harm to one or more individuals?



Has a subpoena been issued for the video?

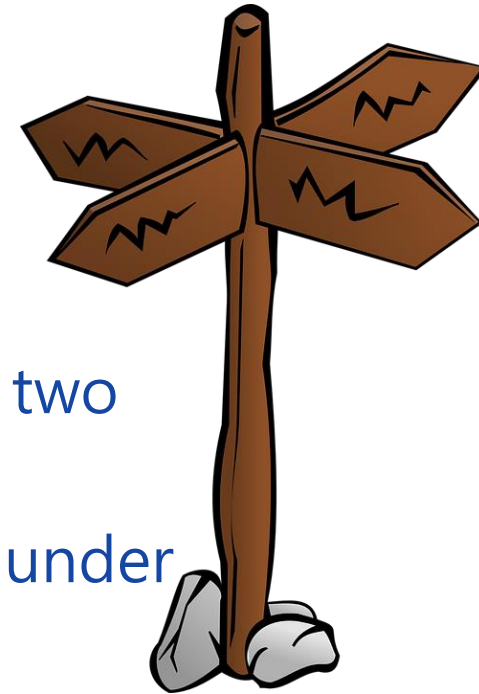
Step 3: If no exception, obtain consent

- If there are one or more students who are the subject of the video, then it may be released to authorities if school obtains a release from the students' parents/guardians.
- The PD must also sign an Acknowledgement form agreeing the video will not be further disclosed. This is the case for release of records to any third party pursuant to a signed consent

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Back to the Scenario: Where does FERPA apply?

- The uneventful passing period:
 - Educational record? NO – it did not involve a specific incident.
 - Provide to the police? YES – FERPA does not apply.
- The money/drug exchange between the students:
 - Educational record? YES – involved a specific incident between two students.
 - Provide to the police? NO – educational records are protected under FERPA
 - Must obtain written/signed parental consent or determine that another exception applies.



Scenario

A student's parents are going through a divorce. The school receives a subpoena for the student's records directed to the custodian of records, as well as a subpoena directed to the student's teacher for testimony. How should the school respond?



Guidance: Responding to a Subpoena

For Student Records:

- Mail a written notice to both parents and allow the parents at least a week to respond before providing requested documents to the attorney.



For Testimony:

- Teachers should not communicate with the issuing attorney (or any third party) about the student, even if the attorney contacts the teacher prior to his/her appearance.
- Teacher should plan to testify only on the date and at the location provided in the subpoena.

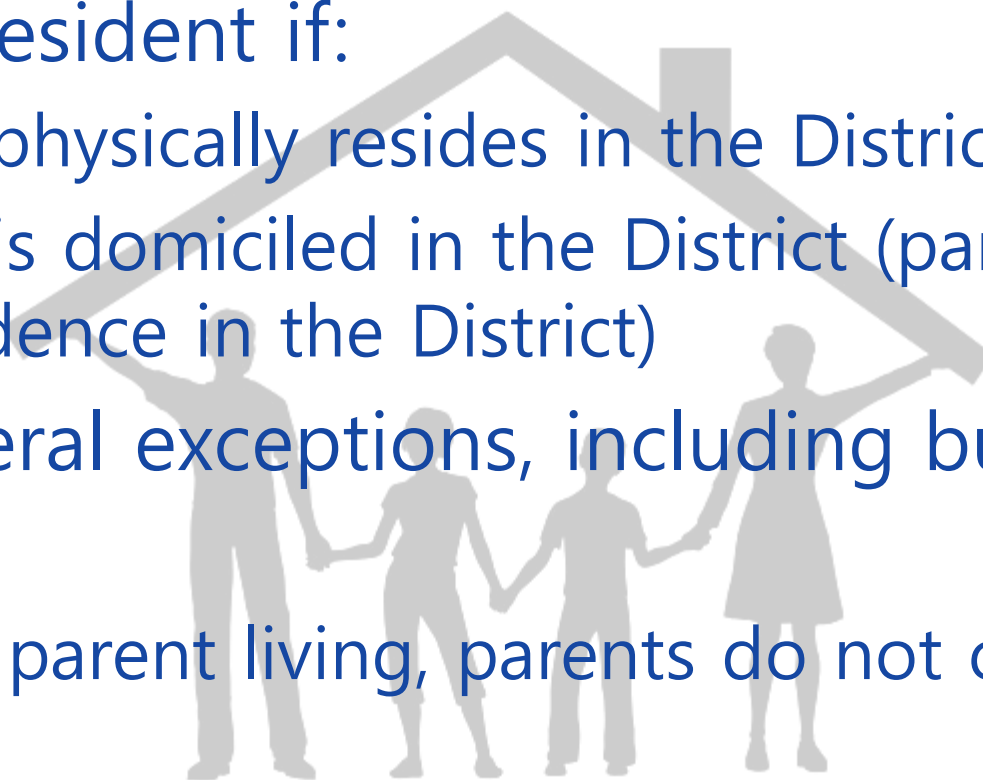
Scenario

A father enrolls his student. On the enrollment paperwork, he lists his girlfriend as a guardian of the student.

- How should we address this with the parent?
- Can we require documentation?
- How does this affect communication between the school, the parent, and the supposed guardian?

Residency Requirements

- Student is a Resident if:
 - The student physically resides in the District
 - The student is domiciled in the District (parent/guardian rents or owns residence in the District)
- There are several exceptions, including but not limited to:
 - Homeless
 - Orphan, one parent living, parents do not contribute to support
 - Waivers



Resident Students & Guardianship Requirements

Residency:

- The student must reside in *and* be domiciled in (meaning parents/guardians reside in) the district in which the student is trying to enroll.
- If the student is living in the district but not domiciled in the district, the student may request a residency waiver.
 - Typically residency waivers are only available to students who are actually living in the district.
 - Once the waiver is filed, the student is typically allowed to enroll in the district while awaiting the board's decision.
 - Waivers should only be granted on the basis of hardship or good cause.
 - Living in the district for reasons other than attending school in the district may be good cause.
 - Athletic or academic ability should *never* be a basis for hardship or good cause.

Scenario

- You receive a relative caregiver affidavit from a child's aunt. She lives in the District and is attempting to enroll the child in the District. She tells you that the child is living with her, and the affidavit states this as well, but the affidavit also states that the child is living with the aunt for educational purposes.

Resident Students & Guardianship Requirements

Relative Caregiver Affidavits:

- These affidavits should only be accepted by the District if the student is living with a relative caregiver who is a resident of the district and not with a parent/guardian.
 - The affidavit can't be used to prove residency, but could be used to grant a residency waiver.
- Section 431.058, RSMo., defines a "relative caregiver" as a competent adult who is related to a child by blood, marriage, or adoption who is not the parent and who represents in an affidavit that the child lives with the adult and that the adult is responsible for the care of the child.
- A relative caregiver with a properly executed affidavit can consent to enrollment and participation in any school activities when the parent has delegated in writing the parent's authority to consent OR after reasonable efforts have been made to obtain the parent's consent, the consent of the parent cannot be obtained.
- This affidavit expires one year after it is received by the school, so it should be updated annually.



Resident Students & Guardianship Requirements

Attorney-in-Fact:

- Section 475.602, RSMo., allows a parent to delegate decision-making authority to another individual for not more than one year.
 - Does not have to be a relative.
- That person is then the “attorney-in-fact” and can exercise “any of the powers regarding the care and custody of the child.”
- The parent can revoke this at any time, and doesn’t relinquish any of his or her rights by signing this affidavit.
- The school has to be notified of the existence of the power of attorney and given a copy of it as soon as possible.
 - Have to communicate with both the parent and the attorney-in-fact regarding “the custody, visitation, or support of the child.”
- This could also not be used to prove residency, but could be used to grant a residency waiver.
- The power of attorney has to include certain things and be witnessed by a notary to be valid.

Scenario

- A mother comes in with her child to enroll him. She does not speak English and is unable to provide any records for the child. All she has is a birth certificate from another country and a lease for an apartment in the District. The child does not have a social security number.

Undocumented Students

- A district cannot deny admission to school or participation in any program based on a student's undocumented status.
- Any such discrimination would be a denial of the equal protection of the laws in violation of the Fourteenth Amendment of the United States Constitution.
- The student should be enrolled and evaluated for appropriate grade placement, ELL status, migrant student status, and (if necessary) special services.

School Enrollment of Homeless Students – The Basics

- Students are entitled to immediate enrollment in any public school; even without all required documentation
- School districts must develop and revise policies to remove barriers including due to outstanding fees, fines, or absences
- If a student doesn't have immunizations or records of those immunizations, the school district must immediately assist in obtaining them
- Enrolling schools must obtain school records from previous school
- School must maintain McKinney-Vento students' records



The Rude Visitor



The Rude Visitor

- It's back-to-school night and you are checking parents in with their students. While you are getting Jack's parents checked in, Jill's mother who is in line behind them, snaps at you for wasting time and not moving quickly enough. She mutters some additional insults under her breath using language that is not appropriate around kids.



School Visitors and Patron Issues



- On the first day of school, Jill's mother comes to the front office with a Happy Meal for Jill. You explain that the students have already had lunch and are on the playground, and that she will have to come by for lunch another time. She responds by throwing the bag on the floor and cussing all the way out the door. She calls and leaves a hateful message on the school's voicemail later that afternoon.

The Rude Visitor

When presented with a problem visitor, get an administrator!



Questions?