

RANDOM LEGAL TID-BITS FACED BY SECONDARY SCHOOL PRINCIPALS

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AGENDA

1. UPDATE OF TRANSGENDER LITIGATION
2. PARENTS/STUDENTS RECORDING MEETINGS
3. STUDENT INVESTIGATIONS
4. LAW ENFORCEMENT IN SCHOOLS
5. CUSTODY ISSUES

LEGAL ISSUE #1: TRANSGENDER LEGAL ISSUES

- ❖ No Utah law or court case with regard to accommodating transgender students.
- ❖ In September, 2015, a federal district court in Virginia upheld a school district's resolution that restrooms must be used according to a student's sex, not gender. G.C., a student born as female but who identified as male, had challenged the resolution as discriminatory under Title IX and the Equal Protection Clause
- ❖ On March 23, 2016, North Carolina passed a law, H.B. 2, requiring individuals to use only restrooms and changing facilities that correspond to the sex on their birth certificates when in government buildings (including schools)
- ❖ In April, 2016, the 4th Circuit overturned the district court's determination, holding that the school board's resolution was in fact discriminatory.
- ❖ On May 9, 2016, the Department of Justice sued North Carolina over H.B. 2, claiming it is discriminatory against transgender individuals in violation of Title VII and Title IX.

LEGAL HISTORY, CONT.

- ❖ On May 13, 2016, the Department of Education and the Department of Justice jointly issued a “Dear Colleague Letter” stating federal funds may be withheld if schools do not:
 - ❖ Treat students consistent with their gender identity even if their education records of identification documents indicate a different sex, using pronouns and names consistent with a student’s gender identity
 - ❖ Allow transgender students to use restrooms and locker rooms and participate in athletics consistent with their gender identity
 - ❖ Protect transgender students’ privacy rights by maintaining school records with the student’s birth name or sex assigned at birth confidential
- ❖ On May 25, 2016, 11 states, including Utah, filed a lawsuit challenging the “Dear Colleague Letter”, claiming the guidance “has no basis in law” and could cause “seismic changes in the operations of the nation’s school districts.” 10 more states filed suit on July 8, 2016
- ❖ On August 3, 2016, the Supreme Court issued a “stay” on the 4th Circuit’s grant of a preliminary injunction which would have allowed the student to use the boys’ bathroom in the Virginia case
- ❖ In February, 2017, Trump administration withdrew May 25 DCL
- ❖ The Supreme Court sent the Virginia case back to the 4th Circuit to be considered in light of Trump’s rescission of the DCL.
- ❖ June, 2017, the student in the Virginia case graduated and withdrew his lawsuit (filed an amended one in district court, where the case is now)
- ❖ TO DATE: Approximately, almost 2 dozen lawsuits have been filed around the country over transgender issues, namely use of restrooms.

IN THE MEANTIME...

So, what are schools to do while the courts fight it out?

1. Educate ourselves
2. Be aware of the issues and best practice tips
3. Ensure a practice of non-discrimination across the board, for all students



STEP I. EDUCATION

- Listen to the stories of transgender persons. Hear their experience and the experience of those who love them.
 - For some insight from a mother of a trans child, watch:
<https://www.youtube.com/watch?v=9LTaBGDrw4M>
- Listen to students and parents who are expressing concern and worry to you about school safety.
- Listen, before responding with a definitive answer.

EDUCATION, CONT.



- Biological sex at birth: objectively measurable organs a child is born with. Also referred to “birth assigned gender” or “gender assigned at birth”
- Gender identity: how people think of themselves and which gender they feel they are. In other words, gender identity is an emotional, rather than a physical characteristic. It is generally believed that gender identity is formed by about the age of four (although an individual may not realize it until later) and it very rarely changes after that.
- Gender expression: how people demonstrate their gender to the outside world through things like dress, speech, and behavior. Gender expression may change depending on circumstances.

*NOTE: Sexual attraction is not a factor in determining gender identity or gender expression. Often, gender identity is defined long before a person is sexually attracted to anyone.

TERMINOLOGY

- Transgender person: a person whose gender identity does not match his/her biological sex at birth. Importantly, a person's status as transgender does not depend upon whether that person has undergone (or even intends to undergo) any medical treatment for gender reassignment, nor does it depend on who a person is sexually attracted to.
- Transgender female: a person whose assigned sex at birth is male but identifies and lives as a female. Also referred to as MTF, or male-to-female.
- Transgender male: a person whose assigned sex at birth is female but identifies and lives as a male. Female-to-male, or FTM

TERMINOLOGY, CONT.

- Transition: the process a transgender individual goes through to live as their self-identified gender. Although it may include medical intervention, no such treatment is required for a person to transition.
- Social transition
 - Use a different name
 - Use of a different pronouns
 - He, she, her
 - They, zey
 - Surface transformations of physical appearance (hair cut, earrings,--expression side)
 - Use of bathrooms that suits the person's gender more accurately
- Medical transition (any combination)
 - Use of a medical interventions to block natal puberty
 - Use of cross-sex hormones
 - Gender Confirmation Surgery (vs. sex reassignment or sex change—not changing anything, just confirming)
 - Use of a bathroom that suits the person's gender more accurately

ISSUE #1: NAMES AND PRONOUNS

- Recognize that this is often the first step in transitioning from one gender to another. When a request to refer to a student by a different name comes to your attention, consider asking the student if he/she would like to schedule a meeting with parents to discuss other issues that may arise and to ensure there is a plan in place to help the student feel safe.
- Transgender students, **like all students**, should be addressed in informal verbal and written communication by the preferred name and/or pronoun.
 - If you require parental permission to call students something different than what is on the roll or not, you should apply the requirement to all students, even-handedly.

ISSUE #2: TELLING PARENTS

- If a school employee believes that “a situation exists which presents a serious threat to the well-being of a student,” the employee must notify parents without delay. (Utah Code 53G-2-203(6)(b)(i)). Other than a threatening situation, consider the following factors in making a determination about talking to parents:
 - Age of students
 - Whether student is being bullied based on sexuality or gender identity
 - Student requests
 - Knowledge of parents’ relationship with students
- What if a student asks to be called a preferred name/pronoun and parents object? Unless the student is 18, parents’ requests should govern.

ISSUE #3: SCHOOL RECORDS

- In Utah, official school records must include information found on the student's birth certificate. This includes name and gender. (R277-419-10(2)(b): "The direct transcription of student names from birth certificates or other reliable proof of student identity and age shall be the student's legal name for purposes of maintaining school records.")
- Under FERPA, a parent may request a school to amend a student's records, including the name on official records, but it is ultimately up to the school whether the request will be granted. If an amendment to a record is denied, parents have the right to insert a statement in the record setting forth his or her views.
- A court order changing the birth certificate is the only way a student's name and gender is changed on official school records.
- What constitutes an official school record?
 - Classroom seating chart? (Probably not)
 - A roll? (Probably not)
 - Notes to parents about the student? (Probably not)
 - Student homework? (Probably not)
 - Transcripts? (Probably)
 - Yearbook? (Probably not)



ISSUE #4: SCHOOL BATHROOMS/LOCKER ROOMS

- No court in Utah has taken a position on this issue.
- Of the courts around the country that have addressed this issue, most have been settled out of court or voluntarily dismissed; many are pending, and a few have granted a preliminary injunction level. Only I denied a preliminary injunction for the transgender student.
- Generally, in civil rights issues, courts do not care so much about the discomfort of others.
- Many schools provide a uni-sex bathroom to any student desiring to use the bathrooms. Make sure the uni-sex bathroom is not so inconveniently located that a student may claim unequal access.
- Long term solution? Closed stalls in all locker rooms and all bathrooms for use by any or all students.
- In the meantime, **BEST PRACTICE:** Review on a case by case basis and work with parents to ensure students do not feel discriminated against. Consider age of student, age of transition, physical nature of facilities, location/proximity of faculty or single sex bathrooms, and student's desire. Consult with district officials.

ISSUE #5: SCHOOL OVERNIGHT TRIPS

- Review on a case-by-case basis.
- Work with district officials.
- Work with transgender student and family.
- Consider:
 - Providing a single room for the student, *if the student is okay with this*. Forcing the student to be in a single room where all other students get to share a room could be problematic.
 - Putting 2 kids in a 2 bed room, rather than 4.
 - Putting the student with a close friend—male or female—also going on the trip.
- May be okay to say, “We will not permit students who do not share the same anatomy to share intimate spaces overnight.”
- BUT do not jump to this answer.



ISSUE #6: STUDENT-ON-STUDENT HARASSMENT/BULLYING

- Schools have a legal duty to protect ALL STUDENTS from harassment by adults and other students. The Supreme Court in *Davis v. Monroe* (1998) has stated that school officials may be liable if they are “deliberately indifferent” to student-on-student harassment that is persistent, pervasive, and severe.
- Licensed school employees have a professional responsibility under 277-515 both not to harass students and to protect students from harassment by other students.
- If you receive a complaint that other students are harassing/bullying a student based on his gender identity—even if you don’t believe it’s happening—document, investigate, document your investigation, follow-up with parents, and put a safety plan in place if necessary. **DO NOT DO NOTHING!**

ISSUE #7: COMMUNICATION AND CONFIDENTIALITY

- **Soliciting information** about a student's sexual behavior, orientation, or attitudes is prohibited under Utah Code 53G-9-203(1)(c). Resist the urge to play therapist!
- Once information has been obtained—regardless of how— **respect the student's privacy rights**. For many students, being 'outed' is their biggest fear. A transgender female who has transitioned may not want anyone to know she was born male. Respect that desire!
- **Keep confidential** information about students discussed with administrators and with other faculty.*
*Discussions about students with other faculty should only be on a needs-to-know basis.
- **Official school records** that identify the student's legal name and gender as they appear on the birth certificate are considered "records" under **FERPA** and may not be shared with anyone outside of the exceptions under the law.

ISSUE #8: DRESS CODE



- Ensure your school dress code is gender neutral.
- If a transgender boy is wearing a dress and he is not doing anything to harm anyone else, even if it is causing disruption, address the disruption, not the dress.
- Dance attire: Think twice before punishing a transgender female (born male, identifies as female) from wearing a dress to Prom. Especially if she has been elected Prom Queen.
- Graduation attire: if you have gender-specific graduation attire, consider getting rid of it or allowing transgender students to wear the attire of the gender they identify with.

ISSUE #9: SPORTS

UHSAA Interpretation and Guidelines I.1.4: Transgender Participation:

“A student shall be permitted to participate on a gender specific sports team that is consistent with the public gender identity of that student for all other purposes. In making a determination of eligibility, the UHSAA will first refer to the confirmation of the student and his or her local school regarding gender identification. The UHSAA will require that **member school districts and schools make a determination of a student’s eligibility to participate in gender specific sports** team for a particular season based on the gender identification of that student (1) in current school records, and, (2) daily life activities in the school and community at the time that sports eligibility is determined.”

ISSUE #10: PARENTS' INVOLVEMENT

Because of the many issues that can arise when working with transgender students, parental involvement at the outset is key. Work with the parents to establish a plan for:

- What name to call the student,
- What pronoun to use
- Bathroom/locker room accommodations
- Overnight field trips
- Athletic team participation
- Preventing bullying/harassment

FOR THIS REASON, HELP THE STUDENT UNDERSTAND THE VALUE OF INFORMING PARENTS. KEEP IN MIND, AGE MATTERS. A 17 YEAR OLD TRANS STUDENT MAY BE ABLE TO NAVIGATE THE WORLD OF TRANSITIONING BETTER THAN A 12 YEAR OLD WITHOUT PARENTAL INVOLVEMENT.

**LEGAL ISSUE #2: WHAT TO DO WHEN
CANDID CAMERA GETS YOU!**



ONE-PARTY CONSENT

- Utah is a “one-party” consent state when it comes to clandestine recordings.
 - An individual legally can record any wire, oral or electronic communication to which he is a party, or when at least one participant has consented to the recording.
 - Consent is not required at all for the taping of a non-electronic communication uttered by a person who does not have a reasonable expectation of privacy in that communication. (For example, an announcer at a football game)
- This means that only one party has to consent to a recording.
- Even if that one party is the person doing the recording.



YES, I CONSENT

IN OTHER WORDS...

- It is not illegal for parents to record conversations they're having with you.
- It is not illegal for students to record conversations they're having with you.
- It is not illegal for students to record conversations they're having with other students.
- It is not illegal for anyone to record a conversation or interaction between two others where that conversation or interaction takes place in a public place or where there is no expectation of privacy.



WHAT DO YOU DO WHEN...

- You've invited Johnny's parents in for a conference to discuss Johnny's unruly behavior. Johnny's mother, who, incidentally, is crazy obsessed with CSI and believes everything in life can be boiled down to proving a crime took place, had her phone recording the entire conversation, without your knowledge or consent. You do your best to maintain a sense of professionalism but at times you, admittedly, throw out a sarcastic remark in response to some ludicrous statement made by Johnny's father, a retired cop, like "Did you read Johnny his *Miranda* rights before you questioned him about his behavior in class?" (Your response: "Yeah, since all our students are criminals in waiting, we try to prepare them early by giving them *Miranda* warnings every time they talk out of turn.") Unfortunately, it's that statement—recorded in your own voice—that makes its way around the community via Facebook. Media calls come in, the PTA is camped outside your office demanding an apology, and parents are pulling kids out of your school. **What can you do about it?**

WHAT TO DO???

- a) Sue their *#?*#! for defamation.
- b) Post the “full” story on the school’s Facebook page, including what Johnny did in class that required a conference with Johnny’s parents in the first place.
- c) Post the “full” story on your personal Facebook page, including what Johnny did in class that required a conference with Johnny’s parents in the first place. (After all, it’s your personal page so you can post whatever you want)
- d) Respond to media requests by stating, “I apologize for my comment, which was taken out of context. However, I should never have made that statement and I sincerely apologize.”
- e) (Refrain from sarcasm, in the first place.)

WHAT DO YOU DO WHEN?

- Same scenario, only you don't give in to your sarcastic urges and instead, in response to Mr. Johnny's question about reading Johnny his *Miranda* rights, you state—in your most professional voice—“Sir, we treat our students like teen-agers, and not like criminals. Johnny was given every opportunity to explain what he did, but he does not have the right to an attorney nor does he have the right to remain silent when his history teacher asks him if intentionally threw the marker at Sally's head or if it was an accident.” You are surprised to see later that night a post on Mrs. Johnny's Facebook page linking to a recording of what sounds like your voice saying, “We treat our students like ... criminals.” Media calls come in, the PTA is camped out at your office, and parents are pulling kids out of your school. **What do you do?**

DO YOU...

- a) Sue the *#\$!@ for defamation.
- b) Post on the school's website the full story—including Johnny's behavior problems.
- c) Post on your personal website the full story—including Johnny's behavior problems.
- d) Send out the following tweet: "Got screwed yesterday trying to help a kid out. #ihateparents"
- e) Work your district PR person to craft an appropriate response, something like: "Misinformation has been shared with the community which has caused some concern regarding the school staff's response to student misconduct. You would like to correct this misinformation by stating that, while all communications with parents regarding their students are confidential, you can tell the public that the statement you made was 'We treat our students like children, not criminals.' Rest assured we love our students and do not respond to their misconduct as though they were criminals."

WHAT YOU CAN DO WITH WILY PARENTS/STUDENTS

Utah is a one-party consent state. However, you may:

- Students: Work with our administrator to develop a policy regarding acceptable use of recording devices for students in school, prohibiting students from covertly recording others. (Be sure to have a strong educational purpose for such a policy—ie, protects other students, keeps distractions to a minimum, allows administrators to discipline without worrying about “cyberbaiting”, etc.)
- Parents: If the conversation is with wily a parent/adult, ask the parent/adult if he or she is recording the conversation. If so, tell the parent/adult that you would also like to record the conversation.
- Have someone else in the room with you at all times when talking to a wily student or parent/adult.

WHAT YOU CAN DO, CONT.

You can also respond to the public to correct derogatory statements made about you or the school, but check with your district PR person or legal counsel first: **when offended, we are not in the best position to be objective in defense of ourselves.**



LEGAL ISSUE # 3: QUICK TIPS FOR STUDENT INVESTIGATIONS

- General Information

- It is a basic principle that students may be detained and questioned by school officials on matters of school discipline
- Schools have the authority to stop minor students to ask questions or conduct an investigation ***even in the absence of reasonable suspicion***, so long as such authority is not exercised in an arbitrary, capricious, or harassing manner.
- *Miranda* warnings do not apply in school settings
- *Miranda* **does** apply to police custodial interrogations although they happen to occur on school grounds or in the presence of and even with the involvement of school authorities.

GENERAL INFORMATION RE: STUDENT INVESTIGATIONS, CONT.

- Parent notification: School officials have no obligation to contact parents before detaining and questioning students. In a 4th Circuit case, *Wofford v. Evans*, “the Constitution does not impose a duty of parental notification before the pupil’s disciplinary detainment while . . . school guardianship persists.” The court goes on to say that even if parent notification is convenient (w/cell phones, etc.), the ease misses the point. To REQUIRE parent notification adds another investigatory step, when school officials may be faced with imminent danger to students.
- **HOWEVER**, follow your district policies on this point!

STUDENT INVESTIGATION TIPS (CONT.)

1. Interview students independently.
2. Avoid leading questions.
 - Don't ask: "Did Joe beat up Jake?" (to a witness) OR "Joe, you beat up Jake, didn't you?"
 - Instead: "Were you in the hallway after school? Did you see the fight that took place? Can you tell me what happened?" OR "Jake, I understand you were in fight with Jake. Can you tell me what happened?"
3. Ask follow up questions. e.g, "Who else was there?" "Were you present for the entire fight?" "Did you see anything throughout the day that might have caused the fight?" "Do you know why Joe and Jake were fighting?" "Did you hear anyone say anything?" "Did anyone record the fight?"
4. Have students write statements, in addition to verbally interviewing them.
 - Following a written statement, review the statement to ensure that everything the student told you is in the statement.
 - If students are too young to write statements, you may write the statement for the student or record the interview.

STUDENT INVESTIGATIONS, CONT.

5. Ask interviewees for objective information--what they **observed, heard**, instead of what they thought, felt, etc.
6. If you are interviewing students about a bullying situation or a sexual harassment, do not interview the victim and perpetrator together in an effort to have them hug and make up.
7. If law enforcement is involved, police will want to do the interviews first so as not to taint the interview and muddy the waters for the prosecution, if the matter goes to trial. Let them, and then work with law enforcement to get the information you need to carry out your administrative responsibilities.
8. **Document**, document, document!
9. **Report** to proper authorities.

LEGAL ISSUE #4: LAW ENFORCEMENT IN SCHOOLS (NON SRO'S)

- **Rule #1:** Just because they have badges, handcuffs, and a gun doesn't mean they own the school.



- **Rule #2:** Check with your district for individual district practices regarding working with local law enforcement agencies

THE FOLLOWING ARE BEST PRACTICES*

*BUT REMEMBER RULE #2

- **General rule of school visits:** When law enforcement visits school during school hours, they should check in with you or your designee to ensure you are aware of any criminal investigation going on, unless it is an emergency.
- **Arrests:**
 - When law enforcement wants to arrest students at school or on school property, they should notify you of their intent to arrest the student. Make arrangements to bring the student to the office to be arrested so as not to cause a disruption.
 - In circumstances where the student is a danger to himself or others, or may flee to avoid arrest, and when requested by the law enforcement officer, law enforcement may arrest a student in the classroom, but you should accompany the officer to the classroom for the arrest to take place.
 - After the officer has completed the arrest, notify the parents of the arrest and provide the parents with the name of the arresting agency, officer or contact person, and the location the student is being taken. This information should be provided by the arresting agency.

BEST PRACTICES RE: INTERVIEWING STUDENTS AT SCHOOL

School districts have the responsibility during the school day to ensure students are in school and attending class. Typically, where law enforcement wants to interview students, students should be interviewed by outside law enforcement either before or after school at an alternative location. However, it is okay to allow interviews on school property if it will not disrupt the school environment.



BEST PRACTICES RE: INTERVIEWS, CONT.

- **Parent notification when outside law enforcement wants to interview students on school property:**
 - Notify the parents of the request for interview by the law enforcement officer and the reason for the interview.
 - Follow the parent or guardian request to allow or disallow the interview to take place.
 - If the parent approves the request for law enforcement interview but requests that the administrator witness the interview, the law enforcement officer should not interview the student on school property without the administrator present.
 - If the parent/guardian cannot be located, the administrator should inform the law enforcement officer that he/she may not interview the student on school property.

In no way does this guideline preclude a law enforcement officer from lawfully detaining or arresting a student. If an officer wishes to detain or arrest a student and remove him/her from school grounds, do not interfere or question this detention or arrest. Assist the officer with any lawful detention or arrest and then notify parents.

BEST PRACTICES FOR LAW ENFORCEMENT INTERVIEW PROTOCOLS

| | Criminal Incident Involves School | Criminal Incident Does NOT Involve School |
|---|---|--|
| Student is under 14 and is a suspect | SRO may interview student at school. SROs determine whether <i>Miranda</i> is necessary and if so, parents must be present. If parents cannot be located, no interview. Administrators may also be present. | SRO or outside law enforcement should contact administrator to detain student so student can be transported to off campus location* with parents present. Admin contact parents with information after student has been transported. |
| Student is 14 or over and is a suspect | SRO may interview student at school and parents need not be present or notified. SRO determines if <i>Miranda</i> is necessary. Administrators may also be present. | SRO or outside law enforcement should contact admin to detain student so student can be transported to off campus location.* Admin contact parents with information after student has transported. |

LAW ENFORCEMENT INTERVIEW PROTOCOLS, CONT.

| | Incident Involving School | Incident NOT Involving School |
|-----------------------------|---|---|
| Student is a witness | May be interviewed by SRO at school during non-class periods when practical. Parents need not be notified. Administrators may be present. | Should be interviewed by SRO or outside law enforcement before or after school at an alternative location. Parents need not be notified. Administration should not be involved as these interviews should be taking place before or after school. |

SHARING STUDENT INFORMATION WITH OUTSIDE LAW ENFORCEMENT

- Information from student records where there is a health or safety emergency*
 - *FPCO will defer to a school's judgment applying this standard whenever that judgment is supported by a rational basis.
- Information that is considered Directory Information
- District owned devices containing possible evidence of a crime
- Anything specifically identified in a subpoena
- What about
 - Attendance records? --Only if there is health and safety emergency
 - Grades? --Probably not
 - Class schedule? --Again, if there is a health and safety emergency
 - Surveillance cameras? --Defer to your district



LEGAL ISSUE #5: CUSTODY ISSUES

- **Utah Code 30-3-10.9** provides that if a parent plan/divorce decree does not have an education plan (which most of them don't, although moving forward they will be required to have one), the following rules apply:
 - **SCENARIO #1:** If one parent has **sole physical custody**, that parent decides:
 - the home residence for purposes of identifying the appropriate school or another specific plan that provides where the child will attend school;
 - which parent has authority to make education decisions for the child if the parents cannot agree; and
 - whether one or both parents have access to the child during school and authority to check the child out of school. (Schools need not notify Parent A if Parent B does check Student out, but may, if requested.)
- **NOTE:** Neither parent (divorced or married, for that matter) gets to come hang out with a kid during school hours if that is disruptive and/or not allowed for ALL parents. Eating lunch with kids is okay if all parents are allowed to come eat lunch with kids; telling parents "no" on eating lunch is okay if you tell all parents no.

THE LAW, CONT.

- **SCENARIO #2: If parents share joint physical custody, and one parent has custody a majority of the time:**
 - the parent having the child the majority of the time gets to decide the home residence for purposes of deciding the appropriate school
 - the parent having the child the majority of the time gets to make education decisions for the child if parents disagree; and
 - both parents get access the child during the school day and authority to check the child out of school.
- **SCENARIO #3: If parents share joint physical custody, and both parents have an equal amount of time:**
 - A court will make decisions about where the child goes to school and who gets to make education decisions (ie, if there is a fight about it, defer to the person who enrolled the child and tell them they need to get a court order further directing you)
 - both parents get access to the child during the school day and authority to check the child out of school.

BUT WAIT! WHAT IF THERE ARE NO DIVORCE PAPERS?

- What do you do when Mom and Dad are both on birth certificate but only one parent listed in enrollment paperwork?
- PLEASE ASK ABOUT THAT!
- If Mom is enrolling student and makes no mention of Dad, but Dad is on birth certificate, using your best professional sensitivity, find out what you can about Dad's involvement in student's life.
- BEST PRACTICE: ABSENT CUSTODY OR DIVORCE PAPERS, IF A PARENT LISTED ON THE BIRTH CERTIFICATE IS ABSENT FROM THE STUDENT'S LIFE, TREAT THE ENROLLING PARENT AS A PARENT WITH PRIMARY PHYSICAL CUSTODY AND FOLLOW THE RULES IN THE ABOVE SLIDES.

OTHER CUSTODY ISSUES

- Records: Both biological parents have a right to review their child's educational record under FERPA.
- What if Parent A specifically asks that Parent B—who's out of the picture—not be allowed access to Student's record because Parent B is dangerous and will harm Student or Parent A if he/she has the information found in the records?
 - → Remember, the law does not require you to provide information immediately. You have 45 days under FERPA to provide records. Delay providing the record until you have notified Parent A and allowed Parent A time to take necessary action to prevent Parent B from getting the information.

OTHER CUSTODY ISSUES, CONT.

- Picking up students: A child may be picked up from school after the school day is over by either parent and the school is not responsible for which parent picks that child up. The school need not supervise parent pickups to determine that the parent with parent-time is picking up the student.
- Visiting students at school: School visits as an exercise of parent-time is discouraged under the law. (Utah Code 30-3-33(7)). However, if you allow one parent to visit Student during the school day, you should allow both to do so.

CUSTODY ISSUES, CONT.

- Communication: Where both parents have joint and legal custody, and unless otherwise expressly prohibited by a signed court order, all communication that the school or teacher mails home may be mailed only to the address of the parent who enrolled the student. All phone calls from the school or the teacher may be made to the home of the address of the parent who enrolled the student.
- If a student is on a variance from outside the school or district boundaries, the school may communicate primarily with the parent who has custody of the student the majority of the days in the year.
- **HOWEVER**, with technology today, if both parents insist on communication going to both of them, school staff should email both parents when possible.

CUSTODY ISSUES, CONT.

- The school should work in good faith with both parents where there is a reasonable request for telephone communication with a specific parent, but the school reserves the right to determine what is reasonable.
- Do not begin the practice of duplicating letters, notes, memoranda, notices, newsletters or the like sent home with students, unless you want to keep it up. Emailing both parents is easy. Do that.
- If there is anything of importance that is communicated to one parent and not the other, the parents should communicate that information with each other and if they cannot, get a court order requiring the school to communicate separately with each parent.
- **DO NOT TAKE SIDES! TELL YOUR SECRETARIES NOT TO TAKE SIDES!**

HYPOTHETICALS

Mom calls School and says, “My ex-husband is a dirty louse and I don’t want him around my kids, ever. If he so much as drives past the school, I want you to call me immediately.” Do you say:

- A. Your ex IS a dirty louse. I saw him with that floosey Bambi at the movies last night. I can’t believe you stayed with him as long as you did. You’re a saint. And of course; I’ll call you whenever I see him.
- B. You’re the louse. Everyone knows you’re the one who cheated on your ex. He’s a saint. I will most definitely NOT be calling you whenever he comes around; in fact, I’ll call him whenever YOU come around.
- C. I’m sorry, we don’t get involved in family affairs. If there is a court order prohibiting your ex from being at school, we will definitely let you and the policy know if he shows up, but absent a court order, it is our policy and practice to remain neutral in these matters.
- D. Your marital problems are not my problems, so don’t make them mine by asking me to do your dirty spying on each other!

SLIGHT CHANGE OF FACTS...

- What if Mom asks you to call her whenever Dad comes to check kid out?
- What if Mom asks you to call her whenever Dad shows up to school to visit kids?
- What if Mom sends you the parenting plan which clearly shows that she has custody of the kids during the week, and so, please call whenever Dad shows up to school because it is outside his custody time?
- What if Dad (the registering parent) wants you to add “Do not contact mom for any reason” on your student system?

HYPOTHETICAL #2

Dad calls you and says, “My ex found herself a new man who thinks he can be a second dad to my kids just because he married her and is living with them. I don’t want you to give him any records or communicate with him about my kids for any reasons. If he calls, you call the police!” Do you say:

- A. Absolutely. I completely know how you feel. It’s not any of his business, and you’re a much better father than he is, we all know it.
- B. Your ex-wife is lucky to have found herself someone that can truthfully call himself a man, because you are nothing but a weasely, cheating, bleepity bleep.
- C. I understand your concerns; however, if your ex-wife has given consent for her husband to have access to your kids’ records or communicate with the school, the law allows us to do so.
- D. Um....?????

FERPA ALLOWS STEP-PARENTS ACCESS
TO RECORDS!

IF one parent has given written consent for step-parent to access those records

OR

IF the step-parent lives with the child and is acting as a parent in the absence of a biological parents in the home.

FINALLY...

- Don't volunteer or agree to write a letter or appear at a deposition in a custody dispute unless you love the feeling of being cross examined by a snarky divorce attorney who likes to pretend he's Tom Cruise in a "Few Good Men."
- This is the opposite of staying neutral.





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