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Can Safety Concerns Outweigh a Parent's Right to Access Student Records?

The Family Policy Compliance Office (FPCO), the division of the U.S. Department of Education that enforces federal laws related to student privacy, has advised that safety concerns may outweigh a parent's right to access information contained in his or her child's student records. In Letter to Arakaki, 119 LRP 1066 (FPCO 08/01/18), the FPCO concluded that documented safety concerns stemming from a noncustodial parent's prior arrest justified the school's denial of the parent's request for his child's home address, telephone number and other contact information on file.

Overview of FERPA and Wis. Stat. § 118.125

The Family Educational Rights and Privacy Act (FERPA) requires schools to provide parents of minor students with an opportunity to inspect and review their child's education records within 45 days of the parent's request. 34 CFR § 99.10. FERPA defines "education records" as records maintained by an educational agency that are directly related to an individual student. 34 CFR § 99.3. "Parent" is defined to include "a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." *Id.*

Wisconsin's Pupil Records Law (Wis. Stat. § 118.125) similarly requires schools to show and provide parents of minor students a copy of their child's pupil records. Wis. Stat. § 118.125(2)(a)-(b). "Pupil records" are broadly defined as "all records relating to individual pupils maintained by a school," with certain limited exceptions." Wis. Stat. § 118.125(1)(d). A parent who has been denied periods of physical placement does not have the rights of a parent or guardian with respect to his/her child's pupil records. It should be noted that the fact that a parent has been denied legal custody does not necessarily mean that the parent has also been denied periods of physical placement. See Wis. Stat. 767.41(4).

FPCO Decision in Letter to Arakaki

In Letter to Arakaki, the FPCO considered a complaint filed by a biological, noncustodial father who had requested information from his child's student records. Specifically, he requested his child's current address, telephone number, emergency contact information and a list of individuals who had been approved to pick his child up from school. The building principal notified the student's mother of the request. The mother expressed safety concerns related to the father's past arrest, and she explained that she was afraid of the father and did not wish for him to know her address. In light of those safety concerns, the principal denied the father's request.

The FPCO concluded that the school district's refusal to provide the father with his son's contact information did not violate FERPA. The FPCO explained, "This Office has historically advised that, in a situation where a school has evidence that a student, custodial parent, or other individual may be in physical danger from a noncustodial parent, we would not require the school to provide the noncustodial parent with the address, telephone listing, or related contact information regarding the student or parent."

Recommendations

1. In circumstances in which the parental rights of divorced or separated parents is unclear or in dispute, request a copy of any court orders or other documents related to custody and placement. These documents will be helpful not only in responding to requests for student records, but also in determining who has educational decision-making authority, who is considered to be a "parent" under state and federal special education laws, who can pick up the child from school, etc.
2. Upon obtaining the relevant court orders and other documents, review portions related to custody, educational decision-making authority and periods of physical placement especially carefully. Ask for clarification and additional information as appropriate.
3. Make thoughtful and informed decisions regarding the release of confidential student information or providing access to a child at school if, for example, the request is made by a noncustodial parent with whom the school is not familiar, or if the school is aware of safety concerns involving the parent. For example, it may be appropriate to notify the custodial parent of the request and give that parent an opportunity to provide the school with relevant documents, such as court orders denying periods of physical placement or restraining orders. Depending on the circumstances, it may also be appropriate to consult with law enforcement or other outside agencies before making a decision. FERPA provides schools with 45 days to provide parents with their child's student records. Although we generally recommend responding to such requests in a shorter timeframe if possible, school officials should not feel pressured to make an on-the-spot decision that could jeopardize the health and safety of students.
4. Document requests for and disclosures of student records, as required by FERPA. 34 CFR § 99.32(a)(1). If a request from a parent is denied, document the reasons for the denial, including the basis for any safety concerns and recommendations from outside agencies.
5. Ensure appropriate school staff are familiar with School Board policies and state and federal laws relating to student privacy and the rights of parents.

Remember, the above guidance is specific to situations involving safety concerns, and the FPCO complaint decision cited above likely turned on the fact that the noncustodial father had requested his child's contact information as opposed to his child's grades, for example. Generally, parents who have not been denied periods of physical placement by a court have the right to access their child's student records. This is true even if the parent does not share legal custody of their child. We also generally recommend that school districts and school staff remain neutral in custody disputes or other family court matters.

If you need assistance in responding to a parent request for student records, interpreting a court order related to custody or placement, or navigating a complicated or contentious family

situation at your school, please contact Attorney Alana Leffler at aleffler@buelowvetter.com or (262) 364-0267, or your Buelow Vetter attorney.