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The Intersection of Family Law and Education Law

By Debra Chopp



intersections of family law and education law.

School Records: The Family Educational Rights and Privacy Act (FERPA)² is the federal law that gives parents the right to access their child's school records. FERPA does not distinguish between custodial and non-custodial parents with regard to this right.³ Under FERPA, a parent may access his or her child's school records unless there is a court order, state statute, or other legally-binding document relating to divorce or custody that specifically revokes the right.⁴ Michigan law complements FERPA and explicitly addresses the rights of non-custodial parents. Under MCL 722.30, a non-custodial parent is entitled to access his or her child's school records unless there is a protective order that specifically prevents the parent from accessing the child's records. A parent with an order prohibiting the other parent from accessing the child's school records should make sure that the child's school has a copy of the order.

School Meetings: FERPA does not address the rights of non-custodial parents to attend parent-teacher conferences, and there is no Michigan law that prevents a non-custodial parent from attending parent-teacher conferences (absent a court order prohibiting a parent from attending the conferences). Indeed, the Michigan statute that allows non-custodial parents to access their child's school records includes "notification of meetings regarding the child's education" in its definition of school records.⁵ Of course only a parent with legal custody of a child (joint or sole) may make educational decisions with regard to that child,⁶ but any parent may attend conferences.

School Observations: Michigan law allows parents "responsible for the care and custody of a pupil" to observe their child engaged in "instructional activity."⁷ This observation right is subject to a reasonableness requirement.⁸

Special Education: When a child has a disability and could be eligible to receive special education, a whole host of conflicts may arise between parents. Under the Individuals with Disabilities Education Act (IDEA)⁹ as well as under the Michigan Administrative Rules for Special Education (MARSE)¹⁰, parents have multiple rights when it comes to their child's special education. For example, parents must provide consent for a special education evaluation to take place,¹¹ and parents are specifically included as part of the team of educators and specialists who develop a disabled child's individualized education program (IEP).¹² Parents must be invited to

It is well-established that parents have a fundamental liberty interest in directing the education of their children.¹ As family law practitioners know, however, parents do not always agree with each other on matters pertaining to their child's education. Where education issues arise in family law cases, it is important for members of the family law bar to have familiarity with education laws so that they may properly advise their clients. This article will identify and briefly discuss common

their child's IEP team meeting,¹³ and parents have due process rights if they believe their child was denied the "free appropriate public education" guaranteed by the law.¹⁴ Both the IDEA and the MARSE contain broad definitions of who constitutes a parent (including, but not limited to, a natural or biological parent),¹⁵ and both specify that a person who meets the definition of a parent will be presumed to have authority to act as the parent unless that person does not have legal authority to make educational decisions for the child.¹⁶ Therefore, any person meeting the definition of a parent may attend IEP meetings and receive special education records. But only parents with custody over their child can make educational decisions for that child.

Where parents have joint legal custody over a child and disagree with each other regarding some aspect of the child's special education, it may be necessary to file a motion for the family court to decide the issue based on the child's best interests.¹⁷ Otherwise there are risks that include one parent signing consent to evaluate a child over the disagreement of the other parent, one parent agreeing to a set of services and accommodations at an IEP meeting over the disagreement of the other parent, or one parent filing a due process complaint against the school district over the disagreement of the other parent.

Enrollment in School: Finally, Michigan law permits a child to enroll in a school district where either of her parents reside without regard to which parent has custody over that child.¹⁸

This is true even if, for example, the child resides with her mother in Ohio but her father lives in Michigan. That child may enroll in the Michigan school.

As with all educational decisions, the parent with legal custody has decision-making authority over the child. If parents with joint legal custody cannot agree on educational decisions, the family court may intervene on the motion of one parent.

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¹ A long line of Supreme Court cases confirms this parental right, see *Troxel v. Granville*, 530 U.S. 57 (2002); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923). See also MCL 380.10.

² 20 U.S.C. § 1232g; 34 C.F.R. Part 99

³ 34 C.F.R. 99.3

⁴ 20 U.S.C. § 1232g; 34 C.F.R. 99.4

⁵ M.C.L. 722.30

⁶ M.C.L. 722.26a

⁷ M.C.L. 380.1137

⁸ *Id.*

⁹ 20 U.S.C. § 1400 et. seq; 34 C.F.R. § 300 et seq

¹⁰ R 340.1701 et seq

¹¹ 34 C.F.R. § 300.300; R 340.1721

¹² 34 C.F.R. § 300.321

¹³ 34 C.F.R. § 300.322

¹⁴ 34 C.F.R. § 300.507; R 340.1724f

¹⁵ 34 C.F.R. § 300.30, R. 340.1701b(d)(i)

¹⁶ 34 C.F.R. § 300.30(b)(1)(a)-(b), R. 340.1701b(d)(vi)-(vii)

¹⁷ See, e.g., *Lombardo v. Lombardo*, 202 Mich App 151, 507 NW2d 788 (1993).

¹⁸ M.C.L. 388.1624b



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