SCHOOL OBLIGATIONS REGARDING PREGNANT AND PARENTING STUDENTS

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I. INTRODUCTION

This presentation focuses on a school district’s legal obligations to accommodate pregnant and parenting students under state and federal law. Data practices issues that may arise in connection with pregnant students are also addressed.

A. Statistics Regarding Teen Pregnancy and Education

1. According to the CDC, more than 329,000 women between ages 15 and 19 years were reported to have given birth in 2011.
2. According to data collected by the National Center for Education Statistics, 1/3 of young women who drop out of school state that becoming a parent was a major factor in their decision to leave school.

3. Only 51% of young women who have a child before age 20 earn a high school diploma before age 22.

4. The statistics for post-secondary education are even more troubling, as only 2% of women who have a baby before age 18 obtain a college degree by age 30.

B. Recent OCR “Dear Colleague Letter” and Guidance

1. The U.S. Department of Education’s Office of Civil Rights (OCR) recently issued a “Dear Colleague Letter” and an educational pamphlet aimed at addressing school districts’ obligations to pregnant and parenting students under federal law.

2. These documents summarize the applicable federal statutes and contain a list of frequently asked questions regarding pregnant and parenting students.

II. TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

A. Title IX, 20 U.S.C. §§ 1681 et seq., provides:

   No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under an education program or activity receiving federal financial assistance.

B. Federal Regulations enacting Title IX expressly prevent school districts from discriminating on the basis of a student’s actual or potential parental status, including on the basis of the student’s “pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.” 34 C.F.R. §106.40.

1. A school district cannot require a pregnant student to participate in a separate program that is designed specifically for pregnant students.

   • Remember, it is permissible to encourage pregnant and parenting students to seek the assistance of school counselors or to provide them information about the benefits of separate programs.
2. A school cannot prohibit a pregnant student from participating in school clubs, class activities, interscholastic sports, or other school-sponsored organizations.

3. A school district must excuse a student’s absences due to pregnancy or childbirth for as long as the student’s doctor deems the absences to be medically necessary.

   • As long as an absence is excused, students should be permitted to make up missed work through make-up tests and assignments.

   • Also, when a student returns to school, she must be permitted to return to the same academic and extracurricular status as before her medical leave began.

4. A school district must provide the same special services to a pregnant student that it provides to other students with temporary disabilities.

   • When necessary, a school must make reasonable adjustments responsive to the student’s temporary pregnancy status.

   • For example, a student may need a larger desk, frequent bathroom breaks, or access to elevators.

5. School districts must adopt and publish grievance procedures for students to file complaints of sex discrimination, including discrimination related to pregnancy or parental status. 34 C.F.R. § 160.8. [MSBA Model Policy 522].

6. Schools must ensure that policies and practices of individual teachers do not discriminate against pregnant or parenting students.

III. STATE LAW OBLIGATIONS

A. The Minnesota Human Rights Act (“MHRA”) imposes obligations similar to Title IX.

2. The MHRA defines sex as including “pregnancy, childbirth, and disabilities related to pregnancy or childbirth.” Minn. Stat. § 363A.03, subd. 42.

B. A student who is pregnant or a parent is eligible to participate in the Graduation Incentives Program. Minn. Stat. § 124D.68, subd. 2(3).

1. This means pregnant or parenting students are eligible to enroll in state-approved alternative programs, post-secondary courses, an adult basic education program, or “any public elementary or secondary education program.”

2. As with Title IX, participation in any such program must be voluntary. (“A district, charter school, or state-approved alternative program must inform all pupils and their parents about the learning year program and that participation in the program is optional.” Minn. Stat. § 124D.128, subd. 3).

C. Mandatory Reporting of Prenatal Exposure to Controlled Substances.

1. State law requires a maltreatment report to be filed by a mandatory reporter who “knows or has reason to believe that a woman is pregnant and has used a controlled substance for a nonmedical purpose during the pregnancy, including, but not limited to, tetrahydrocannabinol [marijuana], or has consumed alcoholic beverages during the pregnancy in any way that is habitual or excessive.” Minn. Stat. § 626.5561, subd. 1.

IV. DATA PRACTICES ISSUES

School districts may face surprising data practices issues when dealing with pregnant students. For example:

- Can a school district inform a student’s parents that the student is pregnant?

- Can a school district excuse a student for pregnancy-related doctor’s visits without informing her parents?

A. Parents’ Rights to Access Student Data Under FERPA.

FERPA gives parents broad access to student information. The law specifically provides for the withholding of federal funds from educational institutions that
have a pattern or practice of denying parents access to a student’s educational records. 20 U.S.C. § 1232g(a)(1)(A).

1. Parents must be given the opportunity to inspect and review a student’s education records. 34 C.F.R. § 99.10. A school must provide a parent with access to student records within a reasonable period of time, not to exceed 45 days, after it has received a request. 34 C.F.R. § 99.10(b).

2. Schools are also required to provide an explanation or interpretation for records in the event a parent reasonably requests assistance in determining the meaning of a particular record. 34 C.F.R. § 99.10(c).

B. Limitations on Parents’ Rights to Access Student Data.

When a student turns 18 or enrolls in an institution of postsecondary education, he or she becomes an “eligible student.” 34 C.F.R. § 99.3. Subject to the exceptions below, when a student becomes an eligible student, the rights accorded to, and the consent required of, parents under FERPA transfer from the parents to the student. 34 C.F.R. § 99.5(a)(1).

1. Exceptions. Even if a student becomes an eligible student, parents still may have access to student records under certain circumstances, including:

   a. When the student is considered a dependent for income tax purposes. 34 C.F.R. § 99.31(a)(8). This exception allows a parent to examine educational records, but the student retains the right to decide whether the data may be disclosed to other third parties. See IPAD Advisory Opinion 02-019 (May 6, 2002).

   b. When the disclosure is in connection with a health or safety emergency. 34 C.F.R. § 99.31(a)(10). The disclosure may be made in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. 99 C.F.R. § 99.36(a). Prior to disclosing data in the event of an emergency, a school must take into account the totality of the circumstances pertaining to a threat or safety issue and determine whether disclosure is necessary to protect the health or safety of the student or other individuals. 99 C.F.R. § 99.36(c). The Department of Educational will not substitute its judgment for that of a school in evaluating whether an emergency situation necessitates disclosure. Id.
c. In certain circumstances when a student at a postsecondary educational institution violates any law, rule or policy governing the use or possession of alcohol or a controlled substance. 99 C.F.R. § 99.31(a)(15).

2. Additional Student Rights. FERPA does not prevent a school from giving students rights in addition to the rights given to parents. 99 C.F.R. § 99.5(b) (under heading “What are the rights of students?”).


The MGDPA includes the parents of a minor student in its definition of “individual.” Minn. Stat. § 13.02, subd. 8. Thus, the parent of a minor student may request access to the student’s educational records. Id.; see also Minn. R. 1205.0500, subp. 3. Parents may have access to a student’s “educational records,” as the term is defined in FERPA, unless the minor is enrolled as a full-time student in a postsecondary educational institution or the student has attain the age of 18. Minn. R. 1205.0500, subp. 4.

1. Time Period for Providing Access. If a parent requests educational data related to a minor student, a school district must generally provide access to the data immediately, if possible, or within ten days of the date of the request (excluding Saturdays, Sundays, and holidays) if immediate compliance is not possible. Minn. Stat. § 13.04, subd. 3

2. Exception in Situations Involving Minor Students. While a parent may have access to a minor student’s educational data, the student may request that data be withheld from the parent. Minn. Stat. § 13.02, subd. 8. A government entity may withhold data from parents if it determines withholding the data would be in the best interest of the student. Id.

3. Procedure in the Event of a Request for Denial of Access. Government entities that collect private or confidential data from minors are required to provide the minors with a notification that the minor individual has the right to request that parental access to private data be denied. Minn. R. 1205.0020, subp. 3(A). The government entity may require the minor data subject to submit a signed, written request that the data be withheld and to explain the reason for denying parental access. Id. Upon receiving such a request, the government entity shall determine whether denying parental access is in the minor’s best interest by considering the following factors (see Minn. R. 1205.0500, subp. 3(B)): 
a. Whether the minor is of sufficient age and maturity to be able to explain the reasons for and to understand the consequences of the request to deny access;

b. Whether the personal situation of the minor is such that denying parental access may protect the minor data subject from physical or emotional harm;

c. Whether there is ground for believing that the minor data subject’s reasons for precluding parental access are reasonably accurate; and

d. Whether the data in question is of such a nature that disclosure of it to the parent could lead to physical or emotional harm to the minor data subject.

4. **A Twist for Situations Involving Health Services.** As outlined above, the general analytical framework for determining whether denying parental access to data is in the minor’s best interest largely focuses on the potential for physical or emotional harm to the student. In most situations, these factors weigh in favor of parental access. However, in certain situations involving health services, the analytical framework changes to create a presumption favoring denial of parental access to data. **If a minor requests to withhold data related to personal medical, dental, or other health services under the circumstances described below, the data may be released only if failure to inform the parent would seriously jeopardize the health of the minor.** Minn. R. 1205.0500, subp. 3(B)(5); Minn. R. 1205.0500, subp. 5.

a. The minor is living separate and apart from his or her parents and is managing personal financial affairs. Minn. Stat. § 144.341.

b. The minor has been married or given birth to a child and is receiving care for the minor or the minor’s child. Minn. Stat. § 144.342.

c. The minor is seeking care to determine the presence of or to treat pregnancy and conditions related to pregnancy, venereal disease, and alcohol and other drug abuse. Minn. Stat. § 144.343, subd. 1.

** However, if the minor is requesting an abortion, Minnesota law generally requires parental notification. Minn. Stat. § 144.343, subd. 2. **
d. The minor is seeking emergency treatment under circumstances where the minor’s life or health would be threatened in the event of a delay or denial of treatment. Minn. Stat. § 144.344.

5. **Parent Request for Withheld Information.** In the event information is withheld from a parent at the request of a minor, a government entity should attempt to provide information necessary for the parent to understand why the information is being held and the basis for the entity’s decision to withhold information. However, the entity should not reveal the data the minor does not want disclosed. *See IPAD Advisory Opinion 04-021 (April 2, 2004).*

D. **Apparent Conflict Between State and Federal Law?**

The MGDPA and FERPA appear to be inconsistent as they relate to a school district’s ability to restrict a parent’s access to data at the request of a minor student. FERPA does not contain a language allowing a minor to request that data be withheld from a parent, while the MGDPA does. This inconsistency has not been specifically addressed by the courts and we cannot predict how a court would rule on the issue.

1. The Director of the Department of Education’s Family Policy Compliance Office wrote in a 2005 letter that “a record of a student’s absence for confidential medical services maintained by an educational agency or institution constitutes an ‘educational record’ under FERPA because it is directly related to a student … there is no exception to the definition of ‘education records’ or other basis in FERPA on which an educational agency or institution may deny parents their right to inspect and review their children’s records for these excused or allowed absences under FERPA.” *See* “Letter to School and College Legal Services of California re: Parental Access to Records of Confidential Medical Services for K-12 Students” (March 14, 2005).

2. At least one Federal District Court has suggested that records related to the pregnancy of a student would be considered an “educational record” that must be disclosed to a parent under FERPA. *Port Washington Teachers’ Ass’n v. Bd. Of Educ. Of the Port Washington Union Free School Dist.*, No. 04-CV1357TCPWDW, 2006 WL 47447 (E.D.N.Y. Jan 4, 2006). However, the District Court’s observations in this case with respect to FERPA’s requirements have no value as precedent because the Second Circuit Court of Appeals resolved the litigation on a procedural issue. *See Port Washington Teachers’ Ass’n v. Bd. Of Educ. Of the Port Washington Union Free School Dist.*, 478 F.3d 494 (2d Cir. 2007).
3. In a similar situation involving Section 504, the U.S. Department of Education’s Office for Civil Rights (“OCR”) determined that a school district did not violate a Section 504 provision allowing parents to access a minor student’s data when it withheld a student’s psychological and social history reports from the student’s parents due to a state law prohibiting disclosure of the records if a minor child objects. The OCR determined the school district did not have a “policy or practice” of categorically denying parents access to mental health records. See Antioch (IL) Community High Sch. Dist. #117, 17 IDELR 76 (OCR July 30, 1990).

*NOTE* The law in this area is not clear. In the event a school district has questions about its obligations under the MGDPA or FERPA in a specific situation, the district should seek legal advice and explore the possibility of requesting an advisory opinion from the Department of Administration’s Information and Policy Analysis Division (“IPAD”) or from the FCPO at the U.S. Department of Education. The regulations implementing FERPA provide that an educational institution must notify the FCPO within 45 days if it determines it cannot comply with FERPA due to a conflict with State law. See 34 C.F.R. § 99.61.