The Job of a Superintendent
Overview

• Role of ADE Legal Services
• Legal Research and Rules Process
• Residency Disputes
• FOIA/FERPA
• Mandatory Reporting
• Child Custody Issues
• Other Legal Issues
ROLE OF ADE LEGAL SERVICES
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Role of ADE Legal Services

• Our clients are the Arkansas Department of Education and the Arkansas State Board of Education.
• We provide assistance and training to public school districts and schools.
• We provide information to patrons.
• Our website: http://www.arkansased.org/divisions/legal
LEGAL RESEARCH AND RULES PROCESS
Legal Research and Rules

- Legislative Acts
- Rulemaking Process
  - Only when General Assembly grants authority
  - Drafting Process
  - Public Comment
  - Final Approval
  - Legislative Review
  - Filing
RESIDENCY DISPUTES
Student Residency Disputes

- ADE Rules Governing Appeals Involving Student Residency Disputes Between School Districts
- Other laws that may allow students to attend school in school districts other than their districts of residence (school choice; legal transfer, etc.).
Student Residency Disputes

- The basics:
  - Unless another law applies, a student is expected to attend school in the school district where the student resides.
  - “Reside” means to be physically present and to maintain a permanent place of abode for an average of no less than four (4) calendar days and nights per week for a primary purpose other than school attendance. (§ 6-18-202(a)(1))
Student Residency Disputes

• The basics (cont’d):
  – “Resident” means a student whose parents, legal guardians, persons having legal, lawful control of the student under order of a court, or persons standing in loco parentis reside in the school district.” ( § 6-18-202(a)(2))
  – “Residential Address” means the physical location where the student’s parents, legal guardians, persons having legal, lawful control of the student under order of a court, or persons standing in loco parentis reside.” ( § 6-18-202(a)(3))
Student Residency Disputes

• The general rule:

“The public schools of any school district in this state shall be open and free through completion of the secondary program to all persons in this state between the ages of five (5) and twenty-one (21) years whose parents, legal guardians, or other persons having lawful control of the person under an order of a court reside within the school district and to all persons between those ages who have been legally transferred to the district for education purposes.”

(§ 6-18-202(b)(1))

Arkansas Department of Education Legal Update
Student Residency Disputes

• The general rule (cont’d):
  “...[A] student may use the residential address of a legal guardian, person having legal, lawful control of the student under order of a court, or person standing in loco parentis only if the student resides at the same residential address and if the guardianship or other legal authority is not granted solely for educational needs or school attendance purposes.” (§ 6-18-202(b)(2))
Student Residency Disputes

• A person 18 or older may establish a residence separate and apart from his or her parents or guardians for school attendance purposes.

• A school district cannot admit for 10 days or more a student who is not a resident of the school district or is not otherwise entitled by law to attend the school district.
Student Residency Disputes

• The Dispute Process:
  – Step 1: Resident school district determines that one of its students improperly attends a nonresident district and sends notice to the superintendent of the nonresident district.
  – Step 2: Nonresident school district immediately investigates the matter to determine which school district the student is required to attend.
Student Residency Disputes

• The Dispute Process (Cont’d):
  – Step 3: Nonresident school district completes the investigation within 10 business days of receiving the notice (can extend by 10 business days if there are five or more students in question).
  – Step 4: Nonresident school district makes a determination and notifies the resident school district.
Student Residency Disputes

• The Dispute Process (Cont’d):
  – Everyone agrees with the findings and either the student remains in the nonresident district or returns to the resident district.
  – The resident district disagrees and appeals to the ADE within five days of receiving the report from the nonresident district.
  – ADE Hearing Officer makes a determination
  – Determination can be appealed to circuit court
FOIA AND FERPA
FOIA

• Scope: (Two Broad Components)
  – **Open Meetings Requirement**: Requires most meetings of certain governmental bodies to be open to the public; and
  – **Open Records Requirement**: Allows the public to inspect and receive copies of public records unless the law allows for a specific exception
FOIA

• Open Meetings
  – All meetings, formal or informal, special or regular of school districts must be open to the public.
  – Does not apply to school district staff meetings, but records of those meetings are public records
  – Emergency or special meetings require at least two (2) hours advance notice.
  – As few as two board members could be considered a meeting.
FOIA

• Open Meetings (Exception)
  – Can go into executive session for the purposes of certain personnel/student discipline issues
  – Notice requirements still apply
  – Must announce specific purpose of executive session prior to going into executive session
  – Must vote in public afterward or action taken during executive session is void
FOIA

• Open Records
  – A public record includes “writings, recorded sounds, films, tapes, electronic or computer-based information or data compilations in any medium” which “constitute a record of the performance or lack of performance of official functions. . .” Ark. Code Ann. § 25-19-103(1).
FOIA

• Open Records - Access
  – Unless records are exempt from disclosure, all public records shall be open to inspection and copying by any citizen during regular business hours.
  – Requests can be made in person, by telephone, mail, fax, e-mail or any other electronic means.
  – If part of the record is exempt from disclosure, redact the exempted portion and provide the rest.
FOIA

• Open Records - Compliance
  – Law requires immediate access to records unless those records are in active use or storage
  – If in active use or storage, the custodian of the record must provide records within three (3) working days
  – Custodian may charge fees for copies, but fees cannot exceed actual cost of reproduction
  – Penalties for failure to comply
FOIA

• Open Records – Selected Exemptions
  – Records under the Family Educational Rights and Privacy Act (FERPA), unless disclosure is consistent with FOIA
  – Files that would give a competitive advantage to competitors or bidders
  – Home addresses, home phone numbers, cell phone numbers and personal e-mail addresses of non-elected school district employees
  – Personnel records that constitute a “clearly unwarranted invasion of privacy”
FERPA

• Family Educational Rights and Privacy Act
• 20 USC § 1232g; 34 CFR Part 99
• Federal law that protects the privacy of student education records
• Applies to all schools that receive federal funds
FERPA

• Gives parents and students the right to inspect and review student education records maintained by the school;

• Grants parents right to request that schools correct records which they believe are inaccurate or misleading;

• Usually must have permission from the parent to release records to outside parties. Exceptions apply.
FERPA

• Exceptions to parental consent;
  – School officials with legitimate educational interest;
  – Other schools to which a student is transferring;
  – Specified officials for audit or evaluation purposes;
  – Appropriate parties in connection with financial aid;
  – Organizations conducting certain studies for or on behalf of the school;
FERPA

• Exceptions to parental consent (continued);
  – Accrediting organizations;
  – Complying with judicial orders or subpoenas;
  – Appropriate officials in health/safety emergencies;
  – Juvenile justice system;
  – Directory information (if policy and opt-out)
    • Name, address, telephone number, date and place of birth, honors and awards and dates of attendance.
CHILD CUSTODY ISSUES
(ACCESS TO RECORDS)
Child Custody Issues

• Three key sources of information:
  – The Law
  – Your School District Policies
  – Court Orders
The Law

• Who is considered a “parent” under FERPA?
  – “Parent” means a parent of a student and includes a **natural parent**, a **guardian**, or an individual acting as a **parent** in the absence of a parent or guardian. (34 CFR 99.3)
The Law

• Example of parental rights under FERPA:
  – “An educational agency . . . shall give full rights under the act to either parent, unless the agency . . . has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody, that specifically revokes these rights.” (34 CFR 99.4)
The Law

• For the purposes of student records under FERPA, you must think of “custody” and “parental rights” as separate concepts.
• Custody establishes where a child will live and the legal duties of the person with whom the child lives.
• FERPA establishes the rights of parents to access and control records regardless of custody.
The Law

• What FERPA does not address:
  – Requirements to keep parents informed of the child’s educational progress
  – Rights to be informed of and permitted to attend parent-teacher conferences
• A custodial parent cannot prevent a non-custodial parent from having access to records without a court order or other legally-binding document.
The Law

• Arkansas Code (§ 9-13-301)

“Any noncustodial parent who has been awarded visitation rights by the court with respect to a child shall be provided upon request a copy of the current scholastic records of the child by the school district attended by the child.”
The Law

• Arkansas Code (§ 9-13-302)
  “Refusal by any school district or college official or employee having custody or control of student scholastic records to provide such records to any person entitled to receive a copy under the provisions of this subchapter shall be an unclassified misdemeanor punishable by a fine not to exceed five hundred dollars ($500).”
The Law

- Arkansas Code (§ 9-13-104)

“. . .[T]he transfer of a child between the child’s custodial parent and noncustodial parents, when both parents are present, is prohibited from taking place on the real property of a public elementary or secondary school on normal school days during normal hours of school operations.”
District Policy

• Clear policies are very important in this area.
• Most require the custodial parent to provide legal documentation of restrictions on the rights of noncustodial parents to have access to the student or student’s records.
• A noncustodial parent may also provide legal documentation regarding access.
MANDATORY REPORTING
Mandatory Reporting

• School officials, school counselors and teachers are mandated reporters under Arkansas law. (12-18-402)
• You have an obligation to immediately notify the child abuse hotline if you have reasonable cause to suspect that a child has:
  – Been subjected to child maltreatment;
  – Died as a result of child maltreatment; or
  – If you observe a child being subjected to conditions or circumstances that would reasonably result in child maltreatment.
Mandatory Reporting

• You may be immune from liability if you make a report in good faith.
• If you make a report knowing the allegation to be false, it is a Class A misdemeanor for first offense and Class D felony for subsequent offenses.
• If you knowingly or recklessly fail to make a report when you should have, you could be guilty of a Class A or Class C misdemeanor.
• If you unlawfully restrict an employee from making a report, you could also be guilty of a Class A misdemeanor.
Mandatory Reporting

• Code of Ethics
  – You are required to file a Code of Ethics complaint if you observe, or have reasonable cause to suspect, that an educator is involved in the sexual abuse of a student.
  – If you fail to file the complaint, you could be deemed to have violated the Code of Ethics. (6-17-428).
OTHER LEGAL ISSUES
Bullying

• You are required by law to have an anti-bullying policy and provide training to employees (6-18-514)
• Policies must be provided to ADE.
• If you receive a credible report or complaint of bullying, you must promptly investigate the report or complaint and make a report of the action taken as a result of the investigation.
Other Legal Issues

• School Worker Defense Program
  – Protection against civil liability, attorney’s fees, and costs for acts or omissions during official duties of school employees and volunteers
  • Notice of any claim must be given to the School Worker Defense Program within thirty (30) days of a covered person or entity having knowledge of a civil or criminal action being filed or having reason to believe that a claim under the School Worker Defense Program will be made, whichever is later.
  – Program Administrator: Alisa Moore (501) 682-5059 alisa.moore@arkansas.gov
Other Legal Issues

• Kindergarten Start Date (6-18-207)
  – 5 years old on or before August 1
  • No process for waiver
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