

BY LAURA KATERS REILLY

# Family Law 6



## School Laws Every Family Law Practitioner Needs to Know to Assist Divorcing Parents

**A**pproximately one million children in the United States have been involved in new divorces each year since 1997. As divorce for families with school-aged children has become more prevalent, schools have taken on a greater role in the post-divorce lives of children and their parents.

Family law attorneys and their clients need to know how family court orders will be interpreted at school, and how federal and Michigan school laws governing parental rights and residency may override or interact with those orders. This article provides an overview of select federal and Michigan school laws, and offers a school's perspective of family court orders.<sup>1</sup>

# oes To School

## ACCESS TO SCHOOL RECORDS

Parental access to a student's school records is governed at the federal level by the Family Educational Privacy Rights Act (FERPA),<sup>2</sup> and at the state level by the Revised School Code<sup>3</sup> and Section 10 of the Child Custody Act.<sup>4</sup> FERPA gives parents the right to access their child's school records unless a court order specifically revokes this right. The right exists regardless of whether the parent is custodial or non-custodial, and (absent a court order) regardless of whether one parent disapproves of the disclosure to the other parent. FERPA defines "parent" as "a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian."<sup>5</sup>

Section 10 of Michigan's Child Custody Act echoes FERPA in affirming the right of a non-custodial parent to access his or her child's school records, absent a contrary court order:

*Notwithstanding any other provision of law, a parent shall not be denied access to records or information concerning his or her child because the parent is not the child's custodial parent, unless the parent is prohibited from having access to the records or information by a protective order.<sup>6</sup>*

"Records or information" under the Act "includes, but is not limited to . . . school records . . . and notification of meetings regarding the child's education."<sup>7</sup>

The Revised School Code provides a specific exception to a parent's right to access school records when the parent of the student has obtained a personal protection order (PPO) concerning the student's other parent. As long as the language of the PPO prohibits such access, and as long as the "school district, local act school district, public school academy, intermediate school district, or non-public school" holding the student's records also has a copy of the PPO, the school is prohibited from releasing information about the student that will inform the parent subject to the PPO of the stu-

dent or other parent's home address and telephone number, or work address and telephone number.<sup>8</sup>

Accordingly, if one parent seeks to restrict the other parent's access to information in the child's school records, the access restriction must be specifically stated in the divorce decree, PPO, or other court order. The parent who obtains the restrictive order must provide a copy to school officials to implement the restriction. Absent such measures, the school is required by law to provide both parents access to their child's school records—regardless of either parent's custodial rights.

FERPA also provides that a third party may access information in a child's school records by "judicial order or lawfully issued subpoena" without consent of either parent.<sup>9</sup> However, FERPA also requires the school to make a "reasonable effort to notify the parent" of the student before complying with the order or subpoena to give the parent a chance to oppose or limit the subpoena.<sup>10</sup>

## PARENTAL RIGHTS AT SCHOOL

Section 10 of Michigan's Revised School Code provides that parents have broad rights to direct their children's education:

*It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children. The public schools of this state serve the needs of the pupils by cooperating with the pupil's parents and legal guardians to develop the pupil's intellectual capabilities and vocational skills in a safe and positive environment.<sup>11</sup>*

Section 1137 of the Code gives "a parent . . . responsible for the care and custody of a pupil enrolled in the school district" more specific rights to be involved at the school. At reasonable times and subject to reasonable restrictions of the school board, the parent may "review the curriculum, textbooks, and teaching materials" of his or her child's school, and may "be present, to a reasonable degree . . . to observe instructional activity in a class or course in which the pupil is enrolled and present."<sup>12</sup>

## Fast Facts:

■ FERPA gives parents the right to access their child's school records unless a court order specifically revokes this right. The right exists regardless of whether the parent is custodial or non-custodial.

■ Michigan's Revised School Code provides a specific exception to a parent's right to access school records when the parent of the student has obtained a personal protection order (PPO) concerning the student's other parent.

■ The degree to which one parent is granted legal or physical custody has no bearing on whether the child will be permitted to enroll in the school district where the parent resides.

These amendments to the Code are relatively recent (1996) and have had little interpretation in case law. However, nothing on the face of these laws restricts a parent's rights to be involved with his or her child's education as long as the parent is in some way "responsible for the care and custody" of the child. This would encompass physical custody, legal custody, or both.

In practice, these laws mean that absent a divorce decree or other court order restricting a parent's access to the child at school or restricting a parent's ability to make decisions about the child's schooling, the school must assume both parents have the right to do so.

Two situations provide examples of when these parental rights may be a source of conflict: Picking up or dropping off a child at school, and signing waivers, permission slips, and emergency contact cards. In these situations, the school is frequently caught between two disagreeing parents with no clear directive.<sup>13</sup>

The solution is to state clearly any restriction on a parent having access to the child at school in the divorce decree or other court order, with a copy provided to school officials. Parents with joint custody who have difficulty agreeing on educational issues need to secure more detailed divorce decrees or court orders that make parental decision-making authority clear, from field trips to gifted and talented programs. A school cannot simply "take one parent's word for it" and honor one parent's authority over the other in a joint custody situation.

## RESIDENCY FOR SCHOOL ENROLLMENT

Michigan's Revised School Code and State School Aid Act permit a child to enroll in any school district where a parent resides, "without regard to whether a parent . . . has custody of the child."<sup>14</sup> For school funding purposes, the child is then considered a resident of that school district where he or she is enrolled.<sup>15</sup>

This remains true even if one parent resides outside of Michigan.<sup>16</sup> For example, if a child lives in Ohio with his father, who has sole legal and physical custody of the child, the child may still enroll in the Michigan school district where his mother lives and be counted for state aid purposes. Moreover, the child need not be living with a parent in the district to enroll there.<sup>17</sup> In the example, the child may stay during the school year with the father's relatives in Michigan who live in the school district where the mother resides. The child can still enroll in the school district because that is where the child's mother resides.

The significance of these laws in the divorce context is that the degree to which one parent is granted legal or physical custody has no bearing on whether the child will be permitted to enroll in the school district where the parent resides. Provided the child meets the applicable age requirements for enrollment, the child may enroll in either school district.

## CONCLUSIONS

The following practice points are offered:

- If it is important to limit one parent's access to a child or a child's records at school, *make sure it is specifically stated in a*

*court order.* The fact that a parent is non-custodial (legal, physical, or both) does not limit his or her access to a child or a child's records at school under the law.

- If the divorce decree, PPO, or other court order limits one parent's access to a child or a child's records at school, provide a copy of the order to the school district and to the child's school.
- Parents with joint legal custody should designate (adding language to the divorce decree if necessary) which parent will be in charge of signing waivers, consents, permission slips, and emergency contact cards from the school to reduce the likelihood of disputes in this area. Inform the school of that parent's responsibility to prevent misunderstandings.
- By itself, maintaining a child's ability to attend school in one parent's school district versus the other should not be a factor in determining custody. The child may enroll in any school district where a parent resides, regardless of whether the parent has custody of the child.

## FOR MORE INFORMATION

The following websites are useful resources for school law topics that affect parents:

- U.S. Dept. of Education: [www.ed.gov](http://www.ed.gov)
- Michigan Dept. of Education: [www.michigan.gov/mde](http://www.michigan.gov/mde)
- National Council of School Attorneys: [www.nsba.org/cosa](http://www.nsba.org/cosa)
- Michigan Association of School Boards: [www.mnasb.org](http://www.mnasb.org) ♦

This article originally appeared in the Fall 2003 issue of the MCSA *Council News* © 2003 Michigan Association of School Boards.

*Laura Katers Reilly is an attorney with Kendricks, Bordeau, Adamini, Chilman & Greenlee, P.C., in Marquette, Michigan. She is a board member of the Michigan Council of School Attorneys (MCSA), and thanks MCSA board member Carolyn Claerhout and former MCSA board president Lisa Swem for their assistance.*

## FOOTNOTES

1. Federal and state laws on the parental rights of students in special education (e.g., the Individuals with Disabilities in Education Act (IDEA)) are also affected by marital and custody status, but are not covered here. The websites cited at the end of this article are a good source of further information on the parental rights of special education students.
2. 20 USC 12328 and 34 CFR 99.
3. MCL 380.1 et seq.
4. MCL 722.30.
5. 34 CFR 99.3.
6. MCL 722.30.
7. MCL 722.30.
8. MCL 380.1137a.
9. 34 CFR 99.31(a)(9)(i).
10. 34 CFR 99.31(a)(9)(ii).
11. MCL 380.10.
12. MCL 380.1137(1)(a), (b).
13. See e.g., *Pauley v Anchorage School Dist*, 31 P3d 1284 (Alaska 2001) (school principal immune from liability after releasing child to non-custodial parent as stated in court order, despite protests by custodial parent); *Lombardo v Lombardo*, 2002 Mich App 151 (1993) (parents unable to agree on permission to enroll child in school's gifted and talented program, court order based on "best interest of child" factors required).
14. MCL 380.1148a.
15. MCL 388.1624b.
16. See Pupil Accounting Inquiry 1029 (September 10, 1996).
17. See Pupil Accounting Inquiry 1035 (January 9, 1997).