

LEGAL MAILBAG

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Editor's Note: *Legal Mailbag* is a regular feature in the CAS BULLETIN. We invite readers to submit short, law-related questions of practical concern to school administrators. Each month we will select questions and publish answers. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Q. Dear Mailbag: It is getting harder and harder to keep track of families these days. Just last week a student tearfully told me that her parents have split, and that her father has rented an apartment in a neighboring town. The student complained that her father insists that she live most of the time with him because her mom is still seeing the pool boy. Needless to say, I haven't heard a word of this from the parents. I don't want to pile on here, but don't I have to tell her and her family that she is no longer entitled to go to our school if she is living in another town?

-- *By the Book*

A. Dear Book: You may be correct, but then again maybe not. Eligibility for school purposes is determined by the place of actual residence, not by legal custody. If the situation described by the sad little girl continues, you would have grounds to exclude her from school. There are, however, two concerns here. First, this family's upheaval will ultimately be resolved, and it may be premature to decide now that the girl's residence for school purposes has changed. Second, in family matters the parents have some control over the facts, and they can easily modify the living arrangements to maintain "residence" in your town. Given the legal uncertainties and your concern for the student, I would keep my powder dry and simply monitor the situation for now.

Q. Dear Mailbag: When I became principal, I inherited a long-service teacher who has a reputation for insulting students. Unlike my predecessor, I decided to do something about it, and when parents complain, I tell them to put it in writing. Some of the letters are pretty bad, and, for example, one parent wrote that this "Professor Kingsfield" tossed a dime to her fourth grade son and told him to call his mommy to come pick him up. I am working with the teacher, but unfortunately our health insurance plan does not cover a personality transplant. In any event, the local press has gotten wind of this problem, and they are hounding me for copies of the numerous parent complaints I have already received. Can I just put them into the teacher evaluation folder and say no?

-- *Protecting the "Professor"*

A. Dear Protecting: In a word - no. When you receive a parent complaint, that complaint becomes a public record. Some portions of the "record" may be exempt from disclosure, such as any personally identifiable information concerning students. The complaint itself as well as the teacher's name, however, are not confidential and must be disclosed if requested in accordance with the Freedom of Information Act. You asked for it, and you got it! Now the press will get it as well.

Q. Dear Mailbag: My school is in the rich part of town. Some of the McMansion parents tend to have an inflated view of their children's intellectual prowess, and I am constantly getting push-back when we identify (and choose not to identify) gifted students. A second grader was not chosen to participate in our "Exploration" program for gifted youth last week, and his father got in my face and told me that I'd better rethink the selection process because his lawyer is bigger than mine. Can he really take me to a hearing?

-- *Standing Firm (for now)*

A. Dear Standing: The law requires that local districts identify gifted and talented students, and parents can even request a due process hearing over such identification. The parent can, in fact, take you to a hearing over an issue of identification as gifted or talented, though I am sure that your lawyer is big enough to handle it. School districts, however, are not required to provide programs for gifted and talented students. Here, if a program exists for which eligibility depends on gifted or talented status, the parent could possibly prevail on the identification issue through a hearing. Acceding to bullying tactics would be even worse, however, because it would then be difficult to respond consistently to other complaints.