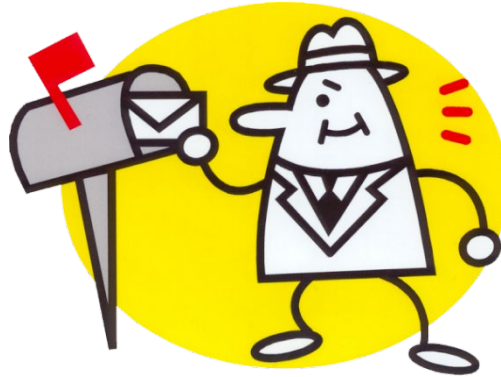


LEGAL MAILBAG – OCTOBER 24, 2024



By Attorney Thomas B. Mooney, Neag School of Education, University of Connecticut

The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. 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.

Dear Legal Mailbag,

Since the beginning of this school year, I have been pulled back and forth by two parents of a student in the school where I am the principal. They are involved in a bitter divorce, and they are both making demands of me and my staff. I pushed back and told them to go to court and have some judge figure it out. They did so, but the problems continue.

Last week, the mother presented me with a court order that shows that she has custody of their child, including custody for educational purposes. I thought that I was all set, but then the father sent me a letter demanding that he receive copies of all progress reports and report cards. When I told the mother about the father’s request, however, she went nuts. She told me in no uncertain terms that he should butt out of all educational issues because she, and only she, has custody for educational purposes. In fact, she threatened to file a FERPA complaint against me if I share that information with him. But when I told the father that his ex has told me that she does not consent to my sharing this information, he threatened to sue me.

Legal Mailbag, would you be able to referee this dispute?

Signed,
Caught in the Middle

Dear Caught:

Legal Mailbag is happy in this case to provide what is a clear legal answer: based on the information that you shared with me, the mother is wrong in her assertions (as long as you don't start letting the father make educational decisions).

First, FERPA defines a "parent" as follows:

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 a guardian.

34 Code of Federal Regulations § 99.3. FERPA further provides that a "parent" has the right to receive personally identifiable student information from an educational institution "unless the agency or institution 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 Code of Federal Regulations § 99.4. While the mother in your case can show that she has custody for educational purposes, Legal Mailbag did not hear you say that the court order revokes any rights the father has as the non-custodial parent.

This right of parents to receive information about a student continues until the student reaches the age of eighteen (and thereby becomes an "eligible student" to whom FERPA rights transfer). However, school officials may continue to release personally identifiable student information to parents after a student reaches eighteen as long as the student remains a dependent for tax purposes.

The father's right under FERPA as a non-custodial parent to access to information about his child is reflected in State law as well. Conn. Gen. Stat. § 46b-56(g) provides that a non-custodial parent may not be denied access to "academic, medical, hospital or other health records of such minor child unless otherwise ordered by the court for good cause shown."

Conn. Gen. Stat. § 10-15b(a) similarly provides that either parent or a legal guardian is entitled to "all educational, medical, or similar records maintained in such student's cumulative record." As amended in 2006, the statute goes on to impose an affirmative duty on school officials that goes beyond providing access. Upon request, a parent with whom the student does not primarily reside is entitled to receive copies of all "school notices" at the same time they are mailed to the parent with whom the student does reside. Any such request is valid for the time the student is at that school. Conn. Gen. Stat. § 10-15b(b).

Legal Mailbag closes this response with a recommendation that school officials never simply accept one parent's claims vis-à-vis the other parent. Court orders in such matters are based on the best interests of the child, and those interests can change from time to time. Accordingly, there is no such thing as a "final" court order involving a child. When school officials receive a copy of a court order from one parent that specifies the respective rights of parents, they should always check with the other parent to make sure that the court order received is the latest word and that there is not a subsequent court order with different provisions.