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The Intersection of Family Law and School Law: The Bright Lines and the Gray Areas

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THE INTERSECTION OF FAMILY LAW AND SCHOOL LAW

The Bright Lines and the Gray Areas

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School employees are often put in the middle of a family law dispute. What happens when the parents fail to agree about the best interests of the child? This paper is a primer on family law for the school lawyer. It will address some of the easy questions - the bright lines - but also a few of the harder questions that reside in the gray area.

I. WHO IS A PARENT?

Only parents have the right to make educational decisions on behalf of their child, unless there is a court order saying otherwise. Unless there is a court order saying otherwise, a parent's rights trumps all others. So, who's a parent? This is usually not an issue. If this is an issue, it usually means there is a bio or adoptive parent involved and you are on your way to resolving the issue. If you've got this figured out, you can go to the next section. If this is an issue, there are several educational statutes that define parent.

Parents have wide-ranging rights over their child's education. They have the right to provide input and make decisions about enrollment, courses, and special services. They have the right to review educational records.² They are entitled to "reasonable access to the school principal, or to a designated administrator with the authority to reassign a student, to request a change in the class or teacher to which the parent's child has been assigned, if the reassignment or change would not affect the assignment or reassignment of another student."³ A parent is allowed to temporarily remove a child from a class or activity because of a religious or moral conflict, if the parent delivers to the teacher a written statement authorizing the removal of the student. This cannot be done to avoid a test or to avoid a class for an entire semester.⁴ This is not an exhaustive list. Unless these rights have been modified by a court order, parents share these rights equally.⁵

The Texas Education Code

The Texas Education Code says a parent, "*includes a person standing in parental relation.*"⁶ This is vague and there are no cases defining it.⁷ The term does not include a person for whom the parent-child relationship has been terminated or a person not entitled to possession of or access to a child under a court order.⁸

Individuals with Disabilities Education Act (IDEA)

The IDEA says “parent” means:

- A. A natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);
- B. A guardian (but not the State if the child is a ward of the State);
- C. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- D. Except as used in sections 1415(b)(2) and 1439(a)(5) of this title, an individual assigned under either of those sections to be a surrogate parent. ⁹

FERPA

FERPA, the federal law governing access to student educational records, says a parent is “a guardian, natural parent, or an individual acting as a parent in the absence of a parent or guardian.”

Texas Family Code

The Texas Family Code, says a person is the mother of the child if:

- a. She gives birth to the child; or
- b. Maternity has been adjudicated; or
- c. She legally adopts the child; and
- d. Her rights have not been terminated. ¹⁰

A person is the legal father of a child if:

- a. He is married (or believes that he is married) to the mother of the child at the time the child is born; or
- b. The child is born within 301 days after the marriage ends, regardless of whether the marriage ends by death or divorce; or
- c. He marries the mother of the child after the child was born, voluntarily asserts paternity, and this assertion is in a record filed with the bureau of vital statistics, or he is voluntarily named on the child's birth certificate; or he promised in a record to support the child as his own; or
- d. He executes an unrevoked and unsuccessfully challenged acknowledgment of paternity; or
- e. He is adjudicated to be the child's father; or

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