

SCHOOL RECORDS CHECKLIST

"Education Records" as defined by the Minnesota Data Practices Act includes any record, or data that is written or recorded¹ that personally identifies a child. In that regard, please send us the following:

	Description	√	If records not available, please comment:
1.	Child-find records		
2.	Kindergarten screening, early childhood services		
3.	Daily attendance records		
4.	Cumulative records and grades transcript		
5.	Portfolio of student's work product		
6.	E-mails		
7.	Regular education teacher(s) files or notes		
8.	Special education & general education teacher(s) files or notes		
9.	Social worker file* including notes		
10.	School psychologist's file* including notes and functional analysis of behavior		
11.	Principal's and assistant principal's notes		
12.	Counselor's notes		
13.	OT notes and records		

¹ Examples of "data" include staff/administrator's notes, e-mails, report cards, progress reports etc.

	Description	√	If records not available, please comment:
14.	Speech notes and records		
15.	Autism specialist notes and records		
16.	Adaptive PE teacher's notes and records		
17.	Paraprofessional's notes and records		
18.	Physical therapist's notes and records		
19.	Due process file		
20.	Records reflecting behavioral intervention, referrals		
21.	Early dismissal, suspension or other discipline records		
22.	School nurse notes and health records		
23.	Chemical dependency records		
24.	Video or audio tapes of student		
25.	Informal assessment and testing; formal assessment, including protocols**		

**We recognize the potential copyright issues with release of protocols. We will release them only if ordered to do so and will confer with the special education director.

Thank you! Please call or email with any questions.

Laura Booth

Booth Law, LLC

763-550-7194 ltbooth@district287.org

Summary of Parental Rights to Records & Conference Attendance

Laura Booth

Booth Law, LLC 2008

Custody	Education records provide to parent	Parent can make educational decisions	Parent can attend IEP meetings or conferences	Comments
**Parent's rights terminated by court order	No	No	No	Request a current copy of termination order if uncertain; otherwise may assume both parents have rights
Parent with sole legal custody	Yes	Yes	Yes	The non custodial parent may still request and receive records
Parents share joint legal custody	Yes – to both parents	Yes – either parent (don't need both to approve decisions)	Yes – either or both may attend (no requirement to have two meetings)	Minn. Stat. §518.17 subd. 3; Minn. Stat. §120A.22 subd.1(no need for 2 conferences)
Parent does not have legal or physical custody, but rights have not been terminated	Yes, upon request	No	Yes	Minn. Stat. §120A.22 subd. 1a; 343 C.F.R. § 99.1.(rights of non-custodial parent to meet & receive records)
Parent(s) have custody but child lives with relative	1. Parent(s). 2. Relative IF parent provides release OR Parent is unavailable & relative "acts as parent"	1. Parents 2. Relative IF parent is unavailable & relative is "acting as the parent"	1. Parent(s) 2. Relative IF "acting as a parent" OR authorized by parent	
Parents never married, custody not determined	Both parents	Either parent may make decisions	Yes – either or both may attend	Law does not require two meetings or conferences
Parents never married, paternity not determined	1. Mother 2. Father if established parent-like relationship	Mother; Father if established parent-like relationship	Mother; Father if established parent-like relationship	
Parents	Both	Both	Both	1

Summary of Parental Rights to Records & Conference Attendance

Laura Booth

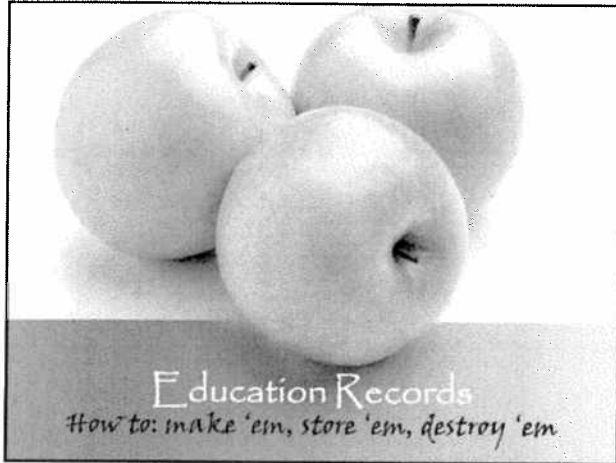
Booth Law, LLC 2008

legally separated, custody not determined				
Foster parents	<i>IF they have a release or, court order</i>	<i>For special education purposes, they may make decisions if parent is not available</i>	<i>Yes</i>	<i>A parent or legal guardian should receive special education notices & must approve special ed changes UNLESS foster parent has court order OR is "acting as a parent"</i>
Child legally emancipated from parents	<i>No</i>	<i>No</i>	<i>No</i>	<i>Ask to see current court order if in question</i>
Child over age 18	<i>The pupil may receive records. The parents may not unless child is a dependent or needs special education services</i>	<i>Yes, if dependent child needs surrogate or if guardian appointed. Otherwise rights transfer to student</i>	<i>Yes</i>	<i>Staff may assume that student being cared for by parents (i.e. living with them) is a dependent for tax purposes & parents may receive pupil's education records</i>
Ward of State	<i>Yes, unless parental rights terminated</i>	<i>Yes</i>	<i>Yes</i>	<i>If parent can't be located, do not need parent authorization for initial consent</i>

** Parent means a parent, guardian or person with legal custody or pupil over 18


For special education purposes, for an unmarried student over 18, a "parent" includes a parent, guardian or conservator.

*** This table provides reference to common custody issues. It is not intended to be legal advice but was designed to accompany an in-service presentation. Please consult your attorney with specific questions.




Overview

- Review of major legal provisions
 - Discussion of "hot topics"
 - Practice pointers
- Your Questions
- Final Points




Two Laws

- Mn Data Practices Act
 - Minnesota Rules
- Family Education Rights & Privacy Act
 - Federal Regulations



Purpose of the Law

1. Access to government data – "sunshine laws"
2. Protection of private & confidential data



What is "Data"?

- Recorded information
- Does not include your mental impressions



Three Types of Data

- Public – accessible to public
- Private* – accessible subject but not to others
- Confidential* – not accessible to subject

* "term of art"

Educational Data is "Private Data"

- * One type of *private data* is educational data
- * Educational Data is "data that refers to or personally identifies the student"

What is Educational Data?

- * Does "educational records" include
 - Your notes ?
 - E mails?
 - Voice mail messages?
 - Mental health records?
 - Sexual harassment complaint?
 - Discipline records?

Education Records Checklist

- Educational data is ANY information that identifies the student or refers to her
- NO MATTER where its stored
- See Checklist



What is Not Educational Data?

- Police records
- Student employment records
- Desk drawer notes but this is a limited exception and it may not apply to paraprofessionals ...



Desk Drawer Exception

- Maintained by admin or teacher
- NEVER shared with anyone else
- Destroyed at years end
 - Data is not "educational data" & need not be provided
 - This exception MAY NOT apply to paraprofessionals



Parent's Request for Data

- All educational data
- Including e mail
- Palm data; planner notes
- Journal entries
- Home computer data

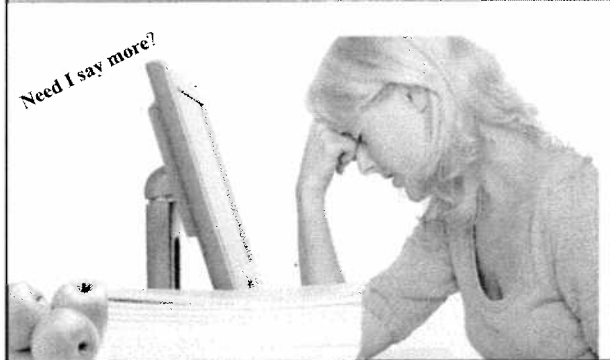


Practice Tip #1

- Write e mail as though parent/judge is standing behind you reading it
- Draft any notes in this fashion
 - Consider medical model (facts)
 - Records belong to parent/ child (not to school)



Email is a Tool of the Devil



Email is a Tool ...

***"The apple did not fall far from the tree,
mom is crazy & so is the kid"***

"If I have to take her in my class,
I will but I won't like it"

"She acts like the Ayatollah" "our teacher is not licensed"



Review

- Data about kids is private data
- Private data is accessible to the subject of the data (parents or kids over 18)
- Email is (well, you get my point!)



Who Has Access to Educational Data?

- Parent, guardian
- Student over 18 years of age
- Person acting as a parent
- Staff with legitimate educational need to know



Who is a "Parent"?

- Biological or adoptive parent
- A person acting as a parent
- Surrogate parent appointed by school



Who has Custody & Does it Matter?

- * Both parents entitled to educational records & to attend conferences REGARDLESS of custody status
- * Exception: Court order
- * Review of custody guidelines



Practice Tip #2

- * If parent asserts the other parent does not have rights, request they provide a certified copy of the order
 - * No faxed orders
 - * Parent's job - not the school's



Persons acting as a "Parent"

- Make reasonable efforts to obtain parent permission
- Request current court order
- Person "acting as parent" may have right to approve special education, field trips etc. & obtain records
- Seek assistance

Staff Access To Educational Data

- Legitimate need to know
 - ANY service provider should have IEP & review & understand it
 - Other staff
 - Administrators

Others Access to Educational Data

- General Rule: Release with written permission or court order
 - Subpoena – command to appear ≠ not a release
 - How to respond to a subpoena

Police

- General Rule: require written permission or court order
- Police Liaison Officer – same rule
 - Liaison officer is not a district employee
 - Thus, has no greater rights than your neighbor to the child's records 😊
 - **Exception** – some district's policy may include school resource officer as "agent"

School of Enrollment

- Provide all education data to school enrolling child without consent or court order
- Includes discipline information
- District notifies parent



Review

- Dad & Mom never married, Dad wants a copy of special education assessment
- Grandma who lives with mom & child comes to conference
- Guardian ad litem requests records
- Police liaison asks to review file



Review continued...

- * Where do most improper releases of data occur?
 - * To doctors
 - * To police
 - * To non-custodial parents
 - * To people passing by



M.P. v. New Prague

- * School released data about student unintentionally
- * Resulted in student being harassed and bullied
- * Jury awarded over \$80,000 in damages (and \$150,000 in attorneys fees)



Minneapolis Case

- District allegedly failed to "shred" documents
- Student was harassed by others
- Court awarded \$160,000 in fines and damages



Creating Data

- Data collection tool
- Must be related to IEP goals and objectives
- Must be objective
- Should not include judgments



Use Objective Language

- Report what you saw or heard
- As opposed to what you believe or surmise



Retention of Data

- School must have a retention & destruction policy approved by Mn Historical Society



Review

- Ed records are all data that relate to student
- Belong to student not to school
- Both parents have right to records absent a court order
- Retain records
- Email is ... well, you understand...



Thank you!

- Have a great end of the year!!

