

# **Litigation Advisory: A Legal “Back to School” Checklist: Mitigating Risk and Managing Your Child**

8/19/2010

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The end of August marks the close of summer and the beginning of back to school season. Among the last things parents of college and high school age children are considering are potential legal issues. Beyond U-Hauls, bed sheets, and moving dates, there are a number of scenarios with significant legal ramifications all parents should consider (and talk about with their children) as part of the college or private prep school preparation process. Below is a checklist of talking points and tips to make sure that your child is fully prepared and protected.

**Know Your FERPA Rights:** The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. FERPA gives parents certain rights with respect to their children’s education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are “eligible students.” A few key points on FERPA:

- Parents or eligible students have the right to inspect and review the student’s education records maintained by the school.
- Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student’s education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
  - School officials with legitimate educational interest;
  - Other schools to which a student is transferring;
  - Specified officials for audit or evaluation purposes;
  - Appropriate parties in connection with financial aid to a student;
  - Organizations conducting certain studies for or on behalf of the school;
  - Accrediting organizations;
  - To comply with a judicial order or lawfully issued subpoena;

- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

Schools may disclose, without consent, “directory” information such as a student’s name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

**Read the Student Handbooks and Codes of Conduct:** Most secondary schools and all colleges and universities have student handbooks. These describe everything from school services to the academic disciplinary process. Some schools (Wellesley College, for example) have adopted “honor codes” which require a student to report “suspected” honor code violations to the school administration. Failure to report could in itself be an honor code violation. Understanding what the college/university or secondary school expects from your child, and how the disciplinary process works, can head off problems that you didn’t see coming. At minimum, make sure you have a copy of the handbook (most all are available online).

**Academic Honesty:** No parent thinks that his/her child would commit an act of academic dishonesty, but the Internet has provided a significant temptation all parents should be aware of (*see ABCTermPapers.com*). Academic administrations have conducted a surprising amount of intelligence focused on identifying the indicators of one student using another’s work, including purchasing a document online. Professors and teachers are more focused on plagiarism and academic administrators are prepared to make examples of those caught in the act. As a parent, proactively address this topic to help avoid future issues.

**Understand Medical Privacy:** One of the worst case scenarios for parents to consider involves your child suffering an injury or illness. If you cannot reach your child directly, you will be relying on the school administration to provide you with information in the immediate term. Federal law—the Health Insurance Portability and Accountability Act (HIPAA)—guarantees the security and privacy of a patient’s protected health information (PHI). Although the federal law is complex, the basic issue is the protection of certain medical information and maintaining the patient’s privacy. Be sure to understand the school’s policy regarding the flow of medical information so that you can access it in an emergency. HIPAA waivers signed by your child will routinely be part of orientation and are normally done at the campus medical center. Check-in for students at the medical center is usually a requirement on the first day of student orientation.

**Campus Police and Privacy Rights:** If your child is going to be living on campus on school-owned property, it is important to understand that your child has limited privacy rights in this setting. How much of a limitation on privacy will depend on how expressly the school has reserved authority over the space in question. For example, public school lockers can be searched by school administrators routinely based on a standard of reasonableness.

**Attend Parent Orientation:** Most schools now offer an orientation for parents, in addition to the students'. For many obvious reasons, it makes sense for you (or someone you designate) to attend the parent orientation. Be sure to get a contact name and number for the Dean of Students so you have a starting point of contact if trouble arises.

**Understand School Policy on Allegations of Sexual Assault:** It is important to understand the school's policy; undoubtedly, it will be "zero tolerance" or hard line. The school's administration is under intense pressure when allegations of sexual assault occur. All it takes is a misunderstanding, a scorned romantic advance or an alcohol/drug influenced sexual encounter coupled with a complaint to a roommate or friend and the Dean of Students may not be far behind. Campus police typically will work with local police and/or the District Attorney's office to investigate allegations of sexual assault. These types of criminal charges come with enormous consequences and are very hard to undo once issued. Statutory rape is a strict liability crime. If your child fornicates with someone under the age of 16, he/she is guilty—consent is not a defense.

**Talk About Alcohol and Drug Use:** The first few weeks of September are typically filled with parties, given the light workloads and social aspects of meeting new friends and roommates. It is important to remember the pressures on school administrators to strictly enforce prohibitions on illegal drug use and underage alcohol use. Procurement of drugs or alcohol for underage students is a serious criminal offense and will bring automatic involvement of local police and criminal charges. Bringing an alcoholic beverage into a public school or onto school premises is a criminal offense, as is selling or buying alcohol on public school property. Drug possession with intent to distribute within 1000 feet of a school zone is a mandatory minimum of two years incarceration.

For young people charged with operating under the influence (OUI), the license loss provisions of the law are very serious. For a driver under 21 years of age, the license loss for a first offense is *210 days* if the driver is a first time offender *and* elects to accept the alcohol treatment/rehabilitation program normally given to first-time drunk drivers. Additionally, if the underage driver *refuses to take the breathalyzer* upon his/her arrest and booking, that will result in an *additional 180-day* license loss.

Furthermore, if the driver is under 21 years of age and the breathalyzer reading is .02 or above, police are required to take the driver's license, provide the driver with written notice of intent to suspend, and issue a temporary driver's license good for 15 days. If the driver is under 21 years of age this results in a *90-day* suspension. If the driver is under 18 years of age, this results in a *180-day* suspension.

**Be Aware of Your Rights to Decline to Speak with Police or the Administration:** Most students are not aware that they have choices when confronted with police or a surprise call or visit from the Dean. Bottom line: You have the right to slow everything down and talk with your parents or legal counsel **before** deciding whether or not to grant an interview. Of course, discretion must be used, but do not get bulldozed into making statements to police or the school administration without a complete understanding of what is going on and an opportunity to discuss the situation with your parent or legal counsel (see the Concord Academy case for gory

details of how police will try to rush the student witnesses together at once and grind a statement out of them before parents or lawyers can get involved). Note: This can be done in a non-confrontational way by simply saying that you have to speak with your parents or your attorney first.

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*For assistance in this area please contact the authoring attorney listed below or any member of your Mintz Levin client service team.*

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