

THE ARCHDIOCESE OF SAINT PAUL AND MINNEAPOLIS

SCHOOL LAW DAY

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**PARENTAL RIGHTS,
RESTRAINING ORDERS, AND
EDUCATION LAW APPLICATION TO
NON-PUBLIC SCHOOLS**

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NOTE: The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date. It is not intended as, nor should it be considered, "legal advice." If you are presented with a specific issue, you should consult with legal counsel.

I. PARENTAL RIGHTS

A. Introduction

Parental rights includes rights to school records, information about school and religious training, rights to attend school conferences, and divorced parents rights of custody and access to children (also known as “parenting time” if ordered by a court.)

B. Parental Rights to Records and Information

1. Legal Definitions

a. Minnesota Statutes governing dissolution of marriage and custody of children provide for parental rights to records and information. (Chapter 518).

“Each party has the right of access to, and to receive copies of, school, medical, dental, *religious training, and other important records and information about the minor children*. Each party has the right of access to information regarding health or dental insurance available to the minor children. Presentation of a copy of this order to the custodian of a record or other information about the minor children constitutes sufficient authorization for the release of the record or information to the requesting party.”

Each party shall keep the other informed as to the name and address of the school of attendance of the minor children. Each party has the right to be informed by school officials about the children’s welfare, educational

progress and status, and to attend school and parent teacher conferences. The school is not required to hold a separate conference for each party. (Minnesota Statutes § 518.17, subdivision 3).

b. Minnesota Statutes governing compulsory school instruction include a similar provision for access to records. (Chapter 120A)

Noncustodial parent access to records Upon request, a noncustodial parent has the right of access to, and to receive copies of, school records and information, to attend conferences, and to be informed about the child's welfare, educational progress, and status, as authorized under section 518.17 subdivision 3. The school is not required to hold a separate conference for each parent.

(Minnesota statute 120A.22, subdivision 1a.)

2. Court Order Unless otherwise ordered, every court order regarding child custody will have attached as "Appendix A" a notice regarding parental rights to records and information. This will include the notice in section 518.17 subdivision 3.

3. No Legal Custody Required Even parents without legal custody are entitled to records and information unless the court order specifically modifies those rights. Look at the court Order and Appendix A for any restrictions to parental rights to information.

4. No Rights to Tuition Contracts A parent who is not a party to a tuition contract has no legal rights to private contract information. This is not a school record.

C. Parental Rights to Attend School Conferences and Designation of others to Attend

1. Legal Authority Minnesota Statutes governing educational data, Minnesota Statute section 13.32, subdivision 10a. Section 13.32 is part of the Minnesota Government Data Practices Act governing education. It is the Minnesota version of FERPA (Family education Rights and Privacy Act). Strictly speaking Section 13.32 is not directly applicable to non-public school but FERPA is.

2. Access to Student Records; School Conferences

- A parent or guardian of a student may designate an individual, defined under paragraph (c), to participate in a school conference involving the child of the parent or guardian. The parent or guardian must provide the school with prior written consent allowing the significant individual to participate in the conference and to receive any data on the child of the consenting parent or guardian that are necessary and relevant to the conference discussions. The consenting parent or guardian may withdraw consent, in writing, at any time.
- A school may accept the following form, or another consent to release student data form, as sufficient to meet the requirements of this subdivision:

“CONSENT TO PARTICIPATE IN CONFERENCES AND RECEIVE STUDENT DATA

I, _____ (Name of parent or guardian), as parent or guardian of _____ (Name of child), consent to allow _____ (Name of an individual) to participate in school conferences and receive student data relating to the above-named child, consistent with Minnesota Statutes, section 13.32, subdivision 10a. I understand that I may withdraw my consent, upon written request, at any time.

(Signature of parent or guardian)

(Date)”

For purposes of this section, “an individual” means one additional adult designated by a child’s parent or guardian to attend school-related activities and conferences.

D. Parental Rights to Child Custody

1. Legal Custody Definition Legal Custody means the right to determine the child’s upbringing, including education, health care, and religious training.

Joint Legal Custody

- The law favors joint legal custody, which means the parents have equal rights and responsibilities over these matters. Conflicts between the parties would need to be determined by the court.
- If domestic abuse occurs, the court does not favor joint legal custody. Be aware that one parent may have sole legal custody on a temporary basis if a domestic order for protection is in effect.
- Joint legal custody may be awarded to parents who have never married.

2. Physical Custody Definition

The parent with physical custody has control over the routine daily care of the child and has the residence of the child.

- Joint physical custody means that the routine daily care and control and residence of the child are structured between the parties. The statute does not precisely define joint physical custody.
- Sole Physical Custody. Although courts may frequently order that one parent is awarded sole physical custody, the non-custodial parent has legal control over the child during court ordered parenting time (visitation). “Custodial Parent” or “Custodian” means the parent who has the physical custody of the child at any particular time. The parent with sole physical custody will typically have rights over the child during the school day, unless the court Order specifically defines the exact times for Parenting time during the school day.

3. Parenting Time

- Defined

Parenting time was formerly known as visitation. Parenting time is a court ordered allocation of time that a parent has physical control over a child. A court order may not always specifically define all parenting time.

- Parents' Rights

If provided in a court order, a parent awarded parenting time has the right to physical control over the child and has authority over immediate matters concerning the child. Therefore, a parent that does not have physical custody still has legal authority over the child during parenting time.

- Parenting Time Disputes

Parents will typically develop routines or arrangements that are not provided in the court order or that directly conflict with the court order. If a dispute arises, the court order governs even if contrary to the parties' practices. Parenting time disputes are generally resolved in family court. Law enforcement will often not want to get involved in enforcement of parenting time disputes. The dispute is generally viewed as a civil matter to be resolved in family court.

- Grandparent Rights

Minnesota law contains specific provisions for grandparent rights. Grandparents may be awarded parenting time with the children. The court order governing parenting time should control in the event of a dispute.

- Vague or Ambiguous Orders

Court Orders are often vague or ambiguous. The Order may not specify the “on-duty” parent during the school day.

4. Providing information to Parents, Attorneys, Guardians, Social Workers and Others

- Don't take sides and become part of the dispute. The school should try to remain neutral.
- Decline to submit Affidavits
 - ✓ Parents will attempt to have teachers, school personnel, coaches, or persons involved with the children's school activities submit affidavits in support of a parent's custody claims. This should be avoided.
 - ✓ A parent's attorney may want to be involved in drafting affidavits, making suggestions or encouraging support.

5. Custody Evaluator

Private custody evaluators may be appointed by the court to conduct custody investigations and to make recommendations to the court to resolve disputes. There should be a court order making the appointment.

- Duties

Conduct interviews with parents, visit homes, obtain information from schools, medical providers, relatives, others who have information about the parents and the child.

- Procedure

Custody evaluator typically sends a questionnaire to obtain information. A school administrator or teacher may be asked to complete the questionnaire.

Custody evaluator may contact the school or teacher by phone to obtain information or to follow-up on a questionnaire.

Custody evaluator prepares a report with recommendations to the Judge.

- Other Evaluations

Court Services may also conduct psychological evaluations of parents. A psychologist may contact the school or a teacher to obtain information for the psychological evaluation.

- Guardian Ad Litem

Court appointed individual charged with representing children in court proceedings.

Guardians do not represent either of the parents.

Guardians are appointed when allegations are made that a child is at risk of physical or significant emotional harm. Sometimes appointed in high conflict custody/parenting time disputes.

Guardians have authority to conduct independent investigation, make recommendations to court, appear in court proceedings.

Guardians are certified by the court and are subject to a separate set of court rules. Seek further advice if you have a question about a guardian's actions because court rules may provide guidance.

- Procedures

Guardian may ask the school or a teacher for information.

Guardian makes recommendations to the Judge regarding custody and parenting time.

II. RESTRAINING ORDERS

A. Domestic Abuse Order for Protection (OFP) Defined.

1. A family or household member may seek a court order for protection on behalf of himself or herself or on behalf of a minor family member for protection from domestic abuse. OFP's are governed by family law statutes. (Minn. Stat. § 518B.01.)

A domestic OFP must be based upon a present intention to inflict physical harm, bodily injury, or assault, or to inflict a fear of imminent physical harm, bodily injury or assault. A verbal threat, depending on the words or circumstances, can provide the basis for an OFP.

B. Harassment Restraining Order (Non-Domestic) Defined.

1. Any person or entity (the petitioner) may seek a court order restraining another person from harassment or from having any contact with the petitioner. Harassment restraining orders are governed by criminal statutes. Minn. Stat. § 609.748. This is part of the criminal statutes.

- a) a single incident of physical or sexual assault or repeated incidents of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another, regardless of the relationship between the actor and the intended target;
- b) targeted residential picketing; and
- c) a pattern of attending public events after being notified that the actor's presence at the event is harassing to another.

2. Respondent

A harassment restraining order may be obtained against any adults or juveniles alleged to have engaged in harassment or organizations alleged to have sponsored or promoted harassment.

3. Comparison to OFP

Note that a school or school representative cannot be a party to an OFP (which is limited to family or household members) but can be a party to a harassment restraining order proceeding.

4. Petition

The petitioner must file a petition showing the name of the alleged harassment victim, the name of the Respondent and contain specific facts and circumstances demonstrating that harassment has occurred.

5. Period of Time

A harassment restraining order must be for a fixed period of not more than two (2) years.

C. Temporary Ex Parte Orders

1. The court may issue a temporary “ex parte” order based solely upon the allegations of the petitioner without any response from the Respondent. The “ex parte” order is fully enforceable and binding upon the Respondent once it is personally served on the Respondent.

D. Hearing

1. The temporary order is in effect until a court hearing is held. The Respondent has the opportunity to object to the issuance of an order for protection or harassment restraining order. The hearing is held before a judicial officer (not a jury). Witnesses may be called.

E. No Contact Order

1. If the court finds that there is a basis for an OFP or harassment restraining order, it will issue an order directing the Respondent to have no contact with the Petitioner. No contact is defined as in person, by phone, indirectly by a third party or otherwise. Electronic contact such as e-mail or text messages are prohibited.

F. Domestic Order Provisions

1. A domestic OFP may include additional provisions regarding temporary custody, parenting time (visitation), child support, counseling or social services for the children, temporary possession of the homestead or other property.

G. Enforcement

1. A copy of the no contact order is provided to law enforcement. Law enforcement should be contacted immediately if the order is violated.

H. Stalking Statute - Criminal offense

1. Defined

Separate statute defines harassment to include stalking. “Harass” means to engage in intentional conduct which:

- the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or intimidated; and
- causes this reaction on the part of the victim.

(Minn. Stat. § 609.749)

2. Crime The statute provides that it is a gross misdemeanor to engage in harassment by stalking. The statute defines numerous acts as a crime, including:

- a) stalking, following or pursuing another;
- b) returning to the property of another without consent;
- c) repeatedly making phone calls;
- d) repeatedly mailing or delivering items.

The stalking statute is distinct from the harassment restraining order statute in that it does not allow a petitioner to commence an action. Stalking should be reported to law enforcement for investigation as a crime.

I. Criminal Penalties

1. Criminal Penalties for Violation of Custodial Rights or Harassment Restraining Orders

a) Deprivation of Custodial or Parental Rights

A person may be charged with a felony who conceals a minor child or takes, obtains, retains, or fails to return a minor child from or to the child's parent (or person with custodial or parenting time rights), according to Minnesota Statutes, section 609.26.

b) OFP or Harassment Restraining Order Violation

- Violation of an OFP or Harassment Restraining Order is a crime.

Local law enforcement should be provided with a copy of an Order for Protection by the court. Police may be contacted with a reported violation of an Order for Protection.

- Repeated offenses are more serious crime.

2. Harassment Restraining Order form. The following is the official form to
 Petition for an Order:

State Of Minnesota
County

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District Court

Judicial District:	
Court File	
Number:	
Case Type:	Harassment

for

Petitioner's Affidavit and Petition

**Harassment Restraining Order
 (Minn. Stat. §609.748)**

Petitioner

Name:
Address:
Date of Birth:
On behalf of: (names of minor children who are victims of harassment and their dates of birth)
Name:
DOB:
Name:
DOB:
Name:
DOB:

vs.

Respondent
 (Person harassing you or your minor child) :

Name:
Address:
Date of Birth:
(if known, or approximate age)

STATE OF MINNESOTA)
 COUNTY OF _____) ss
 (COUNTY WHERE AFFIDAVIT IS SIGNED)

I understand that I am under oath/affirmation and I must tell the truth. I state that:

1. I am the Petitioner in this case. The victim of the harassment is me a minor child for whom I am the parent, legal guardian or stepparent. (If you are the guardian, attach a copy of the order appointing you.)

The name of each victim, other than me, is: _____

How does each victim know the Respondent and what is their relationship? _____

If you are filing on behalf of another person, what is your relationship to each victim? _____

2. How many restraining orders have been in effect, ordering Respondent to stay away from the victims you included at #1 above? none one two or more. For each restraining order provide:

Court File Number, if known	County and State where the court is located

3. The following court cases involve me and the Respondent in issues of child custody or parenting time:

Court File Number	County and State where the court is located

4. Respondent has harassed the victim(s) as follows:

- Check all boxes that apply and give the date and details of each incident.
- To get a Restraining order, you must describe actions that meet the legal definition of harassment in Minnesota. See the Instructions for the definition of harassment.
- One incident of physical or sexual assault can meet the definition of harassment. For any other act, there must be more than one incident.
- If you need more space, attach a full sheet of paper and continue your description there. Do not write on the back.

Respondent physically or sexually assaulted the victim as follows:

Respondent has followed, pursued or stalked the victim as follows:

Respondent made uninvited visits to the victim as follows:

Respondent made harassing phone calls to the victim as follows:

Respondent made threats to the victim as follows: _____

- Respondent frightened the victim with threatening behavior
- Respondent broke into and entered the victim's residence as follows:

- Respondent damaged the victim's property as follows: _____
- Respondent stole property from the victim as follows: _____
- Respondent took pictures of the victim without permission as follows:

- More than once, Respondent has done acts that meet the legal definition of "targeted residential picketing" by: _____

- I told Respondent not to come to certain public events that I or the children attend because: _____

After that, Respondent attended public events I/we attended: (List dates, places and name of events) _____

These acts by Respondent show a pattern of attending public events while knowing that attending is harassing to me/children.

- Other:

5. Describe the effect the harassment has upon the victim's safety, security or privacy:

6. Do you believe the harassment will continue? Why? _____

7. I ask the Court to issue a Restraining Order as follows: Check all boxes (a through e) that apply.

- a. Respondent shall not harass me minor child(ren) for whom I am the parent, legal guardian, or stepparent. List the full names of the minor children included in this

Petition: _____

- b. Respondent shall have no contact with me the minor child(ren) listed above.

- c. Respondent shall stay away from where I/we live (address)

- d. Respondent shall stay away from my/the victim's job site located at

e. Other _____

8. Court Hearing

Petitioner: Read these Notices about a Hearing

- You have a right to request a court hearing.
- If the Judge dismisses your case because it has no merit, no hearing will be held.
- The Judge can issue a Restraining Order without a court hearing if the Judge finds there is immediate and present danger of harassment.
- If the Judge issues a Restraining Order without a hearing, the Respondent can request a hearing within 45 days of the date the Restraining Order is issued. If Respondent requests a hearing, the court will notify you by mail at least five days before the hearing date.
- If there is a hearing, you must attend the hearing and prove that the statements in your Petition & Affidavit are true, and that Respondent's actions are harassment, as defined by Minnesota law.

Choose a. or b.

a. I am not requesting a court hearing at this time.

But if the court denies my request for a restraining order because the court finds there is no immediate and present danger of harassment, then (check one) I want I don't want a court hearing.

OR

b. I am requesting a court hearing.

9. I request a Restraining Order for a length of:

2 years

Until the following date: _____, which is less than 2 years from today.

Up to 50 years because:

I have two or more prior restraining orders against Respondent (listed at #2 above.)

Respondent has violated a prior or existing restraining order between us on two or more occasions. I understand the court will likely schedule a court hearing for any request over 2 years.

Dated: _____

Signature (sign only in front of
notary public or court administrator.)

Name _____

III. EDUCATION LAW APPLICATION TO NON-PUBLIC SCHOOLS

A. Introduction

Examples of State and Federal Law Application to Non-Public Schools. Look for expanding legal definitions to include non-public schools under State and Federal Law.

B. Student Records

1. Section 120A Compulsory Instruction

a) School defined. (Section 120A.22, subd. 4)

For the purpose of compulsory attendance a “school” means a public school, as defined in Section 120A.05, subdivisions 9, 11, 13 and 17, or a **non-public school, church or religious organization**, or home school in which a child is provided instruction in compliance with this Section and Section 120A.24

b) The legislature amended the compulsory instruction law in 2007 regarding educational records. The law now requires non-public schools that receive educational aids or services to do the following:

- Transmit the student’s educational records within ten business days of a request to the public school district, charter school or non-public school in which a student is enrolling.
- Make reasonable efforts to determine the public school district, charter school or non-public school in which a transferring student is next enrolling.

- Include in the transmitted records information about “any formal suspension, expulsion, and exclusion disciplinary action” under the Minnesota Fair Pupil Dismissal Act.
- Provide notice to a student and the student’s parent or guardian that formal disciplinary records will be transferred as part of the student’s educational record. Sample notice to student and parent or guardian:

“As required by Minnesota Law records of formal disciplinary action will be transferred, as part of the student’s educational records, to the school in which the student is enrolling.”

- [The above requirements regarding disciplinary records are new for public school districts, which were already required under existing law to transfer student records.]

2. Application to Non-Public School

- The law applies to a non-public school or charter school that receives educational aids to non-public students such as text books, standardized texts and pupil support services under Minnesota Statute Section 123B.40 to 123B.48.
- Therefore, the law is intended to apply to non-public schools.

3. Linked to Pupil Fair Dismissal Act

Law directly linked to Minnesota Pupil Fair Dismissal Act, Minnesota Statute Section 121A.40.

- Pupil Fair Dismissal Act (“PFDA”) applies to public school districts. This law has not been amended to apply to non-public schools. PFDA procedures are not applicable to non-public schools.

4. Formal Disciplinary Records Only

- Specifically requires transfer of records regarding “formal” disciplinary action under the Pupil Fair Dismissal Act.
- If no “formal” disciplinary action was taken and records made under the Pupil Fair Dismissal Act then there is no requirement to transfer disciplinary records under the language of the law.
- Law makes no reference to transmitting records of student’s history of violent behavior. While law does not mandate this, the model policy for public schools includes this information in educational records and recommends transferring the information. (See Section 121A.64 below for notice requirements.)

5. Withholding of Records for Nonpayment of Tuition

- No exception or exclusion to permit a non-public school to withhold educational records for nonpayment of tuition.
- Law requires transfer of records only to public school district, charter school or non-public school in which a student is enrolling. It does not mention transfer of records to a college. Law does not

specifically prohibit withholding of diploma, graduation information or other educational records from a college.

- Recommendation: Diploma and graduation data may be withheld from a college.
- Tuition payment policies and practices must be reviewed. If payment is not current, decision should be promptly made regarding future enrollment. New law significantly changes prior enforcement practices.

6. Reasonable Efforts to Determine New School. Law does not define “reasonable efforts” to determine new school. This provision is not new for public schools.

7. Text of Law

Education records. (a) A district, a charter school, or a nonpublic school that receives services or aid under section 123B.40 to 123B.48 from which a student is transferring must transmit the student's educational records, within ten business days of a request, to the district, the charter school, or the nonpublic school in which the student is enrolling. Districts, charter schools, and nonpublic schools that receive services or aid under sections 123B.40 to 123 B.48 to must make reasonable efforts to determine the district, the charter school, or the nonpublic school in which a transferring student is next enrolling in order to comply with this subdivision.

(b) A closed charter school must transfer the student's educational records, within ten business days of the school's closure, to the student's school district of residence where the records must be retained unless the records are otherwise transferred under this subdivision.

(c) A school district, a charter school, or a nonpublic school that receives services or aid under sections 123B.40 to 123B.48 that transmits a student's educational records to another school district or other educational entity, charter school, or nonpublic school to which the student is transferring must include in the transmitted records information about any formal suspension, expulsion, and exclusion disciplinary action under sections 121A.40 to 121A.56. The district, the charter school, or the nonpublic school that receives services or aid under sections 123B.40 to 123B.48 must provide notice to a student and the student's parent or guardian that formal disciplinary records will be transferred as part of the student's educational record, in accordance with data practices under chapter 13 and the Family Educational Rights and Privacy Act of 1974, United States Code, title 20 section 1232 (g).

(d) Notwithstanding section 138.17, a principal or chief administrative officer must remove from a student's educational record and destroy a probable cause notice received under section 260B.171, subdivision 5, or paragraph (e), if one year has elapsed since the date of the notice and the principal or chief administrative officer has not received a disposition or court order related to the offense described in the notice. This paragraph does not apply if the student no

longer attends the school when this one-year period expires.

(e) A principal or chief administrative officer who receives a probable cause notice under section 260B.171, subdivision 5, or a disposition or court order, must include a copy of that data in the student's educational records if they are transmitted to another school, unless the data are required to be destroyed under paragraph (d) or section 121A.75.

(Minnesota Statutes section 120A.22, subd. 7)

C. Minnesota Government Data Practices Act

1. By definition does not apply to non-public school but incorporates by reference and intersects with FERPA, which does apply to non-public schools.

a. Education data under Minnesota law. Minnesota Statutes Section 13.32 governs educational data. This is Minnesota's version of FERPA (Family Education Rights and Privacy Act). Makes specific reference to FERPA.

b. Definition of Educational Data 13.32. Educational Data Subdivision 1a) "Educational data" means data on individuals maintained by a **public** educational agency or institution or by a person acting for the agency or institution which relates to a student.

2. FERPA applies to non-public schools. Any educational agency or institution that has received federal funds, direct or indirect, is subject to FERPA.

D. Student Rights, Responsibilities and Behavior, Minnesota Chapter 121A

1. By definition the entire Chapter 121A does not apply to non-public schools, but parts do and non-public schools should adopt policies such as anti-bullying policy.

- Reports of dangerous weapon incidents in school zones
Section 121A.06.
- “School” is defined under Section 120A.22, subdivision 4, which includes a **non-public** school under the compulsory instruction statute.
- “School Zone” is defined to include a **non-public** school under Minnesota law regarding illegal drug use.

2. Notification of Student History of violent behavior.

- Section 121A.64 Notification; Teacher’s Legitimate Educational Interest. A classroom teacher has a legitimate educational interest in knowing which students placed in the teacher’s classroom have a history of violent behavior and must be notified before such students are placed in the teacher’s classroom.
- By definition does not apply to non-public schools. But . . . Chapter 120A.22 (Compulsory Instruction Statute) applies to non-public schools and requires transfer of records as required by FERPA and Minnesota Data Practices Act.