

# Four Legal Issues

*For Which Every School Should Be Prepared*

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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.



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# Overview

1. Custody Disputes
2. Disability Accommodations
3. Discipline, Suspension, Expulsion
4. Teachers, Staff, and Ministers



# 1. Custody Disputes

## Issues that Arise

- Father who child doesn't live with is mad about "educational value," demands to see report cards, attend conferences, and review the tuition contract
- Parents disagree about child pick-up; mom wants to pick up child on Wednesday afternoon, dad says she can't
- Dad says there's a restraining order against mom, so don't let her talk to kids
- Parents are having a court hearing, want you to testify as a witness



# 1. Custody Disputes

## Know the Rights of the Parents

- Decree of Dissolution
  - A court document, signed by a judge, says who has legal and physical custody of the child, may include parenting time, etc.
- Legal Custody
  - The right to determine the child's upbringing, including education, health care, religion, etc.
- Physical Custody
  - Control over routine daily care of the child, child resides with this parent



# 1. Custody Disputes

## Know the Rights of the Parents

- Custodial Parent
  - The parent who has physical custody at any particular time.
  - Has rights over the child during the school day, unless the Court Order says otherwise.
- Parenting Time
  - Court ordered, parent has the right to physical control over the child and authority regarding immediate matters



# 1. Custody Disputes

## Know the Rights of the Parents

- General rights, regardless of custody
  - Access to school, medical, dental, religious training, police reports, and other important records/information
  - Access to information re: health/dental insurance
  - Be informed by other party re: the name and address of the school the child is attending
  - Be informed by the school re: child's welfare, educational progress/status
  - To attend school and parent-teacher conferences



# 1. Custody Disputes

## Know the Rights of the Parents

- General rights, regardless of custody
  - Be notified by the other party of an accident or serious illness of a child, including name of health care provider and place of treatment
  - Be notified by the other party if the child is a victim of an alleged crime, including the name of investigating law enforcement officer/agency
  - Reasonable access and telephone or other electronic contact with child



# 1. Custody Disputes

What does a school have to do?

- Access to school records
- Inform parents re: child's welfare, educational progress/status
- Allow to attend conferences (no right to separate conferences)
- No right to see the tuition contract if not a party to the contract

*The other non-custodial parental rights do not impose an obligation on the school.*





# 1. Custody Disputes

## What can impact parent rights?

- Order for Protection, Restraining Order, DANCO (Domestic Abuse No Contact Order)
  - Court orders
  - You need to have a copy of the order on file, review it, and determine what is required
  - Likely supersedes parenting time/physical custody rights



# 1. Custody Disputes

In disputes, **stay neutral!**

- Do not take sides, stay neutral
- Review court orders and comply with those - consult with legal counsel
- If you don't have the court order, ask for it
- Decline to be interviewed, submit affidavits, or "cooperate" with one side
- Require a subpoena for testimony in court



# 1. Custody Disputes

## Issues that Arise - How to Handle

- Father who child doesn't live with is mad about "educational value," demands to see report cards, attend conferences, and review the tuition contract
- Parents disagree about child pick-up; mom wants to pick up child on Wednesday afternoon, dad says she can't
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## 2. Disability Accommodations

### Issues that Arise

- Student with apparent significant disability applies to your school
- Parents of a student with a disability demand accommodations
- You decide it is not in a student's best interest to stay at your school due to the student's disability
- Student with a disability needs to be disciplined



## 2. Disability Accommodations

What federal laws apply:

- Section 504 of the Rehabilitation Act of 1973:
  - Applies to federal fund recipients. Milk program, lunch, Title I, II, III, IV, V.
  - *Different* requirements for private vs. public schools
  - Private, religious school must make “minor adjustments” for disabled students

## 2. Disability Accommodations

What state laws apply:

- MN Human Rights Act
  - Applies to all schools, public and private
  - Prohibits discrimination on many bases, including disability
  - Requires schools to ensure physical and program access for disabled persons - make reasonable accommodations on a case-by-case basis
    - E.g. auxiliary aids/services, taped texts, interpreters, readers in libraries, adapted classroom equipment, etc.



## 2. Disability Accommodations

### What is required?

- No discrimination through exclusion, expulsion, admission
- Must make accommodations/minor adjustments
  - Extra time for exams, special seating arrangements, breaks/absences, time extensions, extra communications home, special lighting, etc.
  - *Not* accommodations that: require additional staffing, new programs, persistently disrupt other students, modify core academic requirements



## 2. Disability Accommodations

### What is required?

- *Not* 504 plan or IEP. Those are public school requirements
  - Use “Learning Plan” or other terminology
- Public school district is required to create a service plan for student, following IEP process.





## 2. Disability Accommodations

### Issues that Arise

- Student with apparent significant disability applies to your school
  - Schools can't discriminate in enrollment based on disability
  - Don't ask questions to find out about a disability
  - Allow the student to enroll, regardless of concerns
  - Once enrolled, review IEP/504 plan if one exists, have a conversation with parents about what the student's needs are, and whether/how the school can meet those needs

## 2. Disability Accommodations

### Issues that Arise

- Parents of a student with a disability demand accommodations
  - Ask for medical documentation/evaluations from medical professional, that identifies the disability and explains how it limits the student
  - Meet with parents to discuss their requests
  - Do *not* have to do what parents ask
  - Consider requests, offer what is reasonable, have a back-and-forth
  - Document



## 2. Disability Accommodations

### Issues that Arise

- You decide it is not in a student's best interest to stay at your school due to the student's disability
  - Have you worked with family to identify and provide accommodations?
  - Involve public school district special education coordinator
  - Get a recommendation from public school re: most suitable placement
  - If parents do not agree, you can refuse to allow student back

## 2. Disability Accommodations

### Issues that Arise

- Student with a disability misbehaves and needs to be disciplined
  - You *can* discipline, especially if the behavior disrupts other students
  - But be careful, and first consider:
    - Is the behavior a manifestation of the disability?
    - If so, can you accommodate/modify the discipline?



# 3. Discipline, Suspension, Expulsion

## Issues that Arise

- Student has consistently violated school policies (cheating, fighting, etc.)
- Student is bullying
- Student is accused of distributing inappropriate photos



## 3. Discipline, Suspension, Expulsion

### What to remember

- Laws re: due process
  - *Not* the same as public schools
  - Courts look to whether the school followed its own policies
- Your handbook
  - What policies directly apply to the situation? Review them
  - What are your procedures for discipline/suspension/expulsion?



## 3. Discipline, Suspension, Expulsion

### What to remember

- Mandated reporter requirements
  - Is the behavior potential maltreatment of a child?
- Student Safety
  - Does the behavior put that child, or other children, at risk?
- Criminal Issues
  - If the alleged misconduct is possibly criminal, call the police and coordinate with them.



## 3. Discipline, Suspension, Expulsion

Note: this does not cover investigations, which can be a very important part of the process. See Tom Wieser's presentation for more information.



# 3. Discipline, Suspension, Expulsion

## Issues that Arise

- What do you *actually* know? Is an investigation necessary?
- If there are potential safety issues, consider temporary suspension of student with allegation.
- If academic/social disruption, consider rearranging schedules so that students do not interact.
- If there is a complainant, meet with them first and gather your facts.
- What written policies do you have that apply to the behavior?
- What is the past communication? Will parents know about these issues already? (major discipline for ongoing issues should not be a surprise)

# 3. Discipline, Suspension, Expulsion

## Issues that Arise

- Decide: can you settle on discipline before meeting, or do you need information from student/parents in order to make a decision?
- If major disciplinary action is on the table, meet in person and include parents in the meeting
- Before imposing discipline, make sure the student/parents know what the alleged conduct is
- Have at least two school employees (preferably leadership/admin) present for the meeting; take notes
- Be clear on your reasons.

## 4. Teachers, Staff, and Ministers

### The Ministerial Exception - what is it?

- 1st Amendment protection
- Shields religious institutions from some employment law claims
  - Esp. discrimination; *but not* claims like sexual harassment
- Includes religious schools as religious institutions
- Does *not* automatically include all employees - but can include much more than just the religion teacher



## 4. Teachers, Staff, and Ministers

### The Ministerial Exception - why is it important?

- Society  $\neq$  Church teaching
  - Main departure = sex/gender issues
  - Secular businesses can't discriminate
  - Catholic schools can - if the position is "ministerial"



## 4. Teachers, Staff, and Ministers

### The Ministerial Exception - who is covered?

- No rigid formula
- Main question: does the employee “play a vital role in carrying out the religious mission?”
- Documents considered:
  - Handbook, job description, offer letter, performance reviews, any other official documents describing job duties

## 4. Teachers, Staff, and Ministers

### The Ministerial Exception - who is covered?

- Be sure to include in documents:
  - The religious mission of your school
  - How religion is an essential part of the employee's job
  - List of religious duties (lead students in prayer, model life of faith, attend sacraments with students, etc.)
  - Describe how the employee's duties contribute to religious mission
  - Include religious duties in performance review (e.g. personal modeling of faith)

## 4. Teachers, Staff, and Ministers

### The Ministerial Exception - who is covered?

- Paragraphs re: importance of religion included in Archdiocesan template handbook, job description, offer letter
- Be sure to include those paragraphs in your documents
- Extra things you should do:
  - In job description, make sure religious duties are spelled out
  - In performance reviews, emphasize religion
  - In daily management/leadership, be aware of how each of your employees is helping to fulfill the mission of the Church

# Questions?

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