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CONFIDENTIAL COMMUNICATIONS BETWEEN STUDENTS AND SCHOOL PERSONNEL

In Chapter 12 of the Pennsylvania School Code, titled “Students and Student Services,” regulations are provided for: 1) Student Rights and Responsibilities; 2) Student Records; and 3) Services to Students. Section 12 of Chapter 12 specifically addresses confidential communications between students and school personnel. Section 12.12 has two parts. The first part, subsection (a), has to do with the boundaries of confidentiality in the context of legal proceedings. The second part, subsection (b), has to do with limitations to confidentiality of student-school personnel communications when the health, safety and welfare of a student is in jeopardy.

Under Section 12.12(a), confidential communications between students and school personnel “in legal proceedings is governed by statutes and regulations appropriate to the proceeding.” One example, 42 Pa.C.S. § 5945, is provided in Section 12.12(a). This part of Pennsylvania’s consolidated statutes has to do with courts and judicial procedure. This section specifically references communications between students and guidance counselors, school nurses, home and school visitors and school psychologists as well as clerical staff for these professional personnel. It states in part, that when any of the expressly identified personnel, who in the course of their professional duties “has acquired confidential information” from a student in the public, private or parochial schools of Pennsylvania, those specific personnel cannot be compelled to disclose the confidential information in a legal proceeding without the consent of a student over the age of 18 or the parent or guardian of a student under the age of 18. Thus, in proceedings in Pennsylvania courts, under 42 Pa.C.S. § 5945, students over the age of 18 or parents of students under the age of 18 can invoke the confidentiality privilege with respect to testimony by guidance counselors, school nurses, home and school visitors and school psychologists in legal proceedings. It is important to recognize that the confidentiality privilege rests with the student and his or her parents. The privilege is not that of the school personnel. The privilege can of course be waived by the student or the parents of a student under age 18. It is also important to note that the Chapter 12.12(a) reference to 42 Pa. C.S. § 5945 applies to proceedings in Pennsylvania courts. Under the Individuals with Disabilities Education Act (IDEA), a federal statute, different rules apply. Because the IDEA assigns educational decision-making rights to parents, unless a state has established an age of majority for students. Pennsylvania has not done so. Therefore, parents have the confidentiality privilege in IDEA matters for students up through age 21.

Section 12.12(b) provides exceptions for the maintenance of confidentiality of communications between students and school personnel. Specifically, when the “information received in confidence from a student” to school personnel jeopardizes the “health, welfare or safety of the student or other persons” the information may (emphasis added) be disclosed to the student’s parents, guardians or “other appropriate authority.” Clearly, the language of Section 12.12(b) is quite broad. Its application to specific circumstances is discretionary and requires the exercise of sound professional judgment. School personnel must weigh all of the circumstances and balance the health, safety and welfare interests of the student against the confidentiality interests.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.

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