Housekeeping

PowerPoint & Materials

- https://wicciptraining.com/Resources
- Under Training Materials - Webinars

Webinar Format

- Everyone's microphone and video is turned off.
- Please use Chat to ask questions.

Phone Participants

- If participating by phone only, email us with your name and phone number: ccip@wicourts.gov.

Continuing Education

Judicial Officers: .41 credits

- List will be sent to Office of Judicial Education
- Must attend entire webinar for credit
- Certificate of Attendance not required unless watching recording

Attorneys: 1.5 credits

- Applied for CLE credits, including GAL-Minor and GAL
- Search under "Live Webcast" for location

Social Workers: 1.25 hours

- Continuing education hours may be claimed by the individual participant by entering it as an external training in PDS Online



Educational and Medical Decision-Making and the Reasonable and Prudent Parent Standard for Youth in Out-of-Home Care

Wisconsin Department of Children and Families

WISCONSIN DEPARTMENT OF Public Instruction

Educational Decision-Making Authority

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WISCONSIN DEPARTMENT OF Public Instruction
Jill K. Underly, PhD, State Superintendent

The Fine Print



- This presentation is intended as a guide.
- This presentation is intended solely to provide general information and nothing written here shall be understood to constitute legal advice or a legal service.

Differences Between Districts

- Board policies guided by local attorneys interpret the laws
- Differences in interpretation exist
- School employees do not take a course in pupil records law or family law

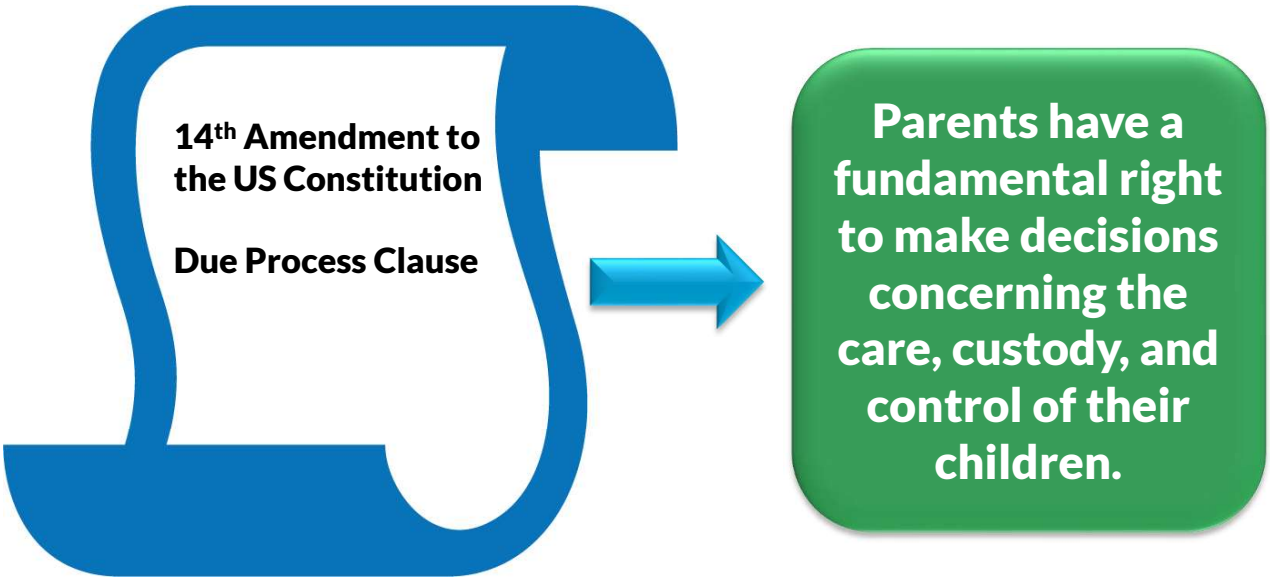


Key Takeaways

- Parents often retain their rights unless specifically denied those rights by the court
- Unspecific court orders create extra confusion, time, and resources by schools to determine the authorities of adults in a student's life



Parental Authority



School Enrollment



I have the right to a Free Appropriate Public Education, because I live here.
(Wis. Stat. §. 121.77(1))

I have an obligation to ensure any child in my control attends school regularly.
(Wis. Stat. §. 118.15)



Best Interest Determination (BID)



Student Placed into Out-of-Home Care; or Change in Placement

Presumption that student will remain in School of Origin

BID Meeting to Determine School Enrollment (with Schools, Child Welfare, Family)

Educational Decision-Making Authority

Who has it?

- Parents, unless specifically denied by court
- Legal guardians, unless limited by court
- Legal custodians, subject to any residual parental rights
- Both parents with joint custody, unless denied by court
- Child Welfare Professionals when temporary legal guardianship has been granted to the county agency
- Indian custodian who also has legal custody or guardianship of the child

Educational Decision-Making Authority

Who does not (by designation alone)?

- Physical custodian
- Adult with physical placement
- Guardian Ad Litem
- Court Appointed Special Advocate
- Adult with whom the child is living

Special Education Decision-Making

- The basics of special education framework will help us understand the types of decisions facing a parent of a student with an individualized education program (IEP)
- For more information:
  - Information for Families
  - Introduction to Special Education
  - Special Education in Plain Language
  - DPI Special Education Topics A-Z

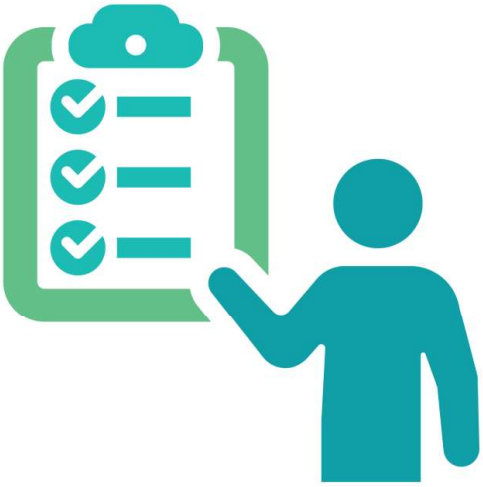
Referral for Evaluation



- Anyone can refer a student
- Parents can request an evaluation at any time
- Certain personnel have a duty to make a referral for an evaluation when they reasonably believe that a disability exists

Processing the Referral

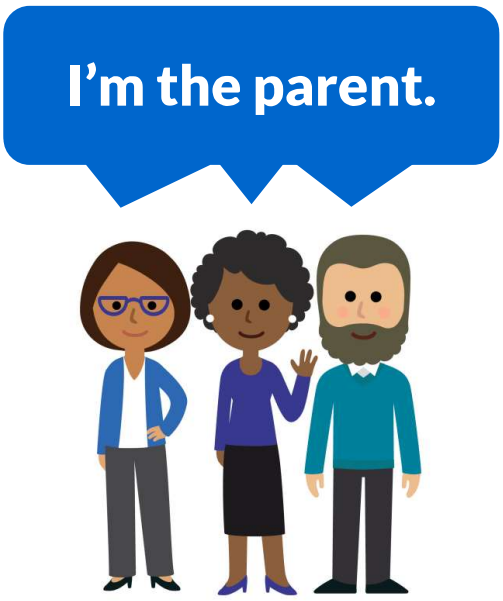
- School districts must process all special education referrals for evaluation
- A “parent” must be involved in the review of existing data
- A “parent” must provide consent, before any additional assessments



Decisions Are Made by the IEP Team

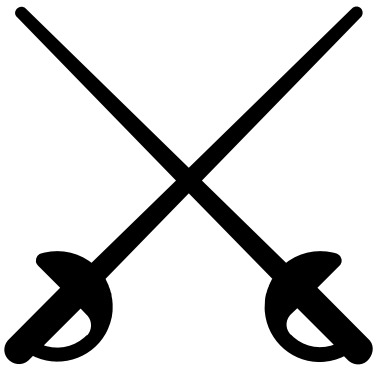


"Parent" for Special Education



- Definition of "parent" in special education is expansive and complex
- Multiple people could have authority to be "the parent"
- Parents retain the right to make decisions unless specifically denied this right by a court
- Please refer to this FAQ document on definitions of parent in Special Ed

Equal or Joint Custody and Special Ed



- In the absence of a court order to the contrary, both parents have equal decision-making authority
- Each parent can exercise that power independently
- Example: One parent revokes services, the other parent starts a new referral

Identifying Parent for Special Education



Specific Court Orders

- **[Person] has access to pupil records, educational decision-making authority, and shall be the "parent" for special education.**
- **While both parents retain joint custody, [parent] shall have final educational decision-making authority and special education decision-making authority in any disputes.**

Pupil Record Defined



- **Information that is written, recorded, or preserved, regardless of physical form or characteristics**
- **Relating to individual pupils; and**
- **Maintained by or by a party acting for an educational agency (§ 118.125(d-e), 34 CFR 99.3)**

Parental Authority to Access Records



Parent is not defined in § 118.125



Parents and Legal Guardians have access and right to authorize disclosure

Within 45 Days

Access must be provided within 45 days and before any IEP meeting



Parents may continue to access records of a dependent adult student, unless student says no



Parents maintain access rights unless specifically denied by court

§118.125(2)(m) is Confusing



- A parent who has been denied periods of physical placement with a child under s. 767.41 (4) does not have the rights of a parent or guardian under pars. (a) to (j) with respect to that child's pupil records.

- It is unclear to many school staff what this means

Out-of-Home Care Provider Access



- Not automatically granted access
- Court order may specify this authority
- Parents/guardians may authorize this access

County Child Welfare Professional Access



- May access pupil records including special education records…
  - with parental written authorization, or
  - when temporary legal guardianship has been granted to the county agency, or
  - when §118.125(2)(q) applies

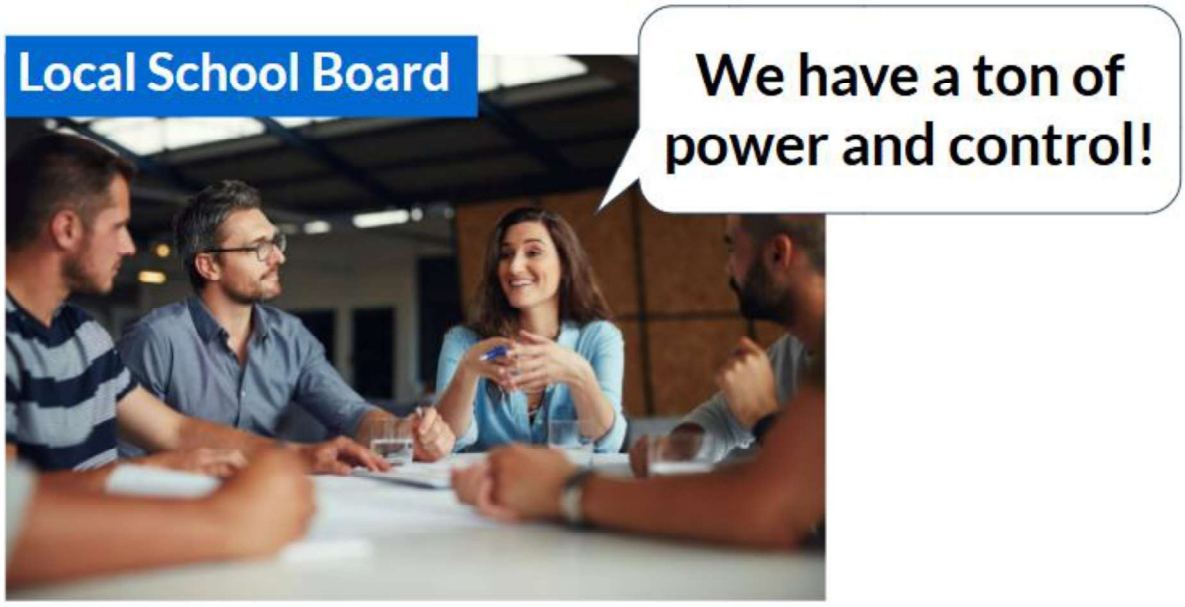
Caseworker Access §118.125(2)(q)

Schools *may* disclose pupil records that are pertinent to addressing a pupil's educational needs to a caseworker or other representative... that is legally responsible for the care and protection of the pupil

- **if the caseworker or other representative is authorized to access the pupil's case plan**
- **They may not re-disclose except to**
    - **a person who is engaged in addressing the pupil's education needs and is authorized to receive the disclosure (such as an out-of-home care provider/foster parent)**
    - **the court**

Wis. Stat. 118.125(2)(q); Uninterrupted Scholars Act of 2013

Resolving Concerns – Authority



Resolving Concerns - Tips

- Connect with trusted school staff
- Review policies and handbooks
- Ask for meeting
- Put agreements in writing
- Clarify roles, timelines, expectations

Key Takeaways

- Parents often retain their rights unless specifically denied those rights by the court
- Unspecific court orders create extra confusion, time, and resources to determine authorities of adults in a student's life



Questions?



Medical Decision-Making and the Reasonable and Prudent Parent Standard

Attorney Rob Collins

Wisconsin Department of Children and Families

Medical Decision Making – Parental Authority

- Parent or guardian retains medical decision-making unless court orders otherwise.
- May issue power of attorney or delegation of parental authority that allows someone else to make certain medical decisions.

Consent Requirements

- Consent needed from parent or guardian for most medical services.
    - Exceptions:
        - Specific statutes.
        - Court orders.
- Agencies often request general consent for routine or emergency care.

When Parents Don’t Cooperate

- Agency may request legal custody transfer. Wis. Stat. § 48.345(4).
    - Legal custody includes the right to provide ordinary medical care. Wis. Stat. § 48.02(12).
- For urgent medical decisions, agency could file a petition for emergency guardianship under Wis. Stat. § 48.9795(6).

Court-Authorized Care

- For youth under Ch. 48/938 jurisdiction:
    - Court may authorize medical services, including surgical procedures if:
        - Court determines reasonable cause exists for the services; and
        - Youth consents. Wis. Stat. 48.373(1).

Guardianship or Delegation of Parental

- There are provisions in Ch. 48 relating to how an adult who is seeking decision-making authority for a child could obtain guardianship or a delegation of parental authority.
    - An individual seeking guardianship of the child could file under s. 48.9795 for private guardianship to consent to medical decisions for the child.
    - A parent who wants to delegate certain decision-making authority of the child to another adult may do so under s. 48.979 (delegation of power by parent).

Emergency Care

- If the child in out-of-home care needs emergency treatment:
    - Take child to ER or call 911.
    - Attempt contact with parent or guardian.



Reasonable and Prudent Parent Standard (RPPS)

- Federal Preventing Sex Trafficking and Strengthening Families Act of 2014 amended Title IV-E to include requirement for a “Reasonable and Prudent Parent Standard” for out-of-home care providers.
    - Standard of decision making that allows out-of-home care provider to make certain parenting decisions for children placed in their care.
    - This applies to licensed foster parents, guardians, court-ordered kinship care providers, unlicensed relatives and non-relatives, group homes, residential care centers, and shelter care facilities.

Reasonable and Prudent Parent Standard (RPPS)

- Providers make decisions about age-appropriate activities that support normalcy and healthy development.
- Promotes emotional growth, well-being, and peer relationships.
- Considers child’s health, safety, best interest, and cultural, religious, and tribal values.

Reasonable and Prudent Parent Standard (RPPS)

- Normalcy = opportunities for typical life experiences.
- Reduces agency barriers; builds trust and connection with providers.
- Every child has a right to personal growth, regardless of placement.



Reasonable and Prudent Parent Standard (RPPS)

- Must consider:
    - Child's age, maturity, and wishes.
    - Risk, culture, and family values.
- When possible and appropriate, caregivers should take a parent/guardian's wishes into consideration.
    - The parent/guardian has valuable insight about the child that help in decision making and allows the parent/guardian to remain as an active part of the child's life.
    - Parent/guardian input is encouraged but not required to make RPPS decisions.

Reasonable and Prudent Parent Standard (RPPS)

- RPPS decisions may not violate:
    - Court orders,
    - Laws,
    - Administrative rules,
    - Services that are part of the child's permanency plan, including but not limited to court-ordered family interaction,
    - Medication authorizations or approvals,
    - Confidentiality laws, or
    - Educational-related decisions based on statute.



Reasonable and Prudent Parent Standard (RPPS)

- Medical decisions are not covered by the RPPS.
- Balance is key:
    - Respect legal rights.
    - Promote child's growth.
    - Maintain parental connection when appropriate.



Questions?

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DCF Website: https://dcf.wisconsin.gov/



DPI Resources

- Understanding Guardianships, Legal Custody, and Physical Custody for School Professionals in Wisconsin -
- Frequently Asked Questions (FAQ) Related to the Definitions, Roles, and Responsibilities of Parents, Persons Acting as the Parent of a Child, and Surrogate Parents
- Special Education Information Update Bulletin 10.01: Parent Consent Requirements When Parents Who Share Legal Custody Do Not Agree
- Residency, Tuition, and Tuition Waivers

Legal Resources



- IDEA Part B Statute
- IDEA Part B Regulations
- 34 CFR § 300.30 Parent
- 34 CFR § 300.519 Surrogate Parents
- OSEP Letter to Shatley, March 27, 2013 (Regarding Appointment of Surrogate Parent)
- Wis. Stat. § 115.76(12) Parent

DPI and DCF Contacts

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