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Answers to FAQs
Responding to a Subpoena
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ICSA publishes this guidance as part of its continuing effort to provide assistance to school officials and leaders. The responses in this FAQ represent the combined thinking of committee members about best practices for responding to subpoenas. Responding to subpoenas involves complicated legal distinctions, which frequently require statutory interpretation. These are best addressed by a lawyer.

This guidance is published for informational purposes only and is not a substitute for legal advice. For legal advice or a legal opinion on a specific question, your district should consult its lawyer.

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1. Background Information

School districts have unique obligations that can make subpoena compliance a difficult process. Depending upon the circumstances, a subpoena may trigger important legal obligations that are based upon various federal and State statutes. Basic background information and tips can go a long way to ease the burden of ensuring that important legal obligations are met, and it can make responding to subpoenas less confusing and time consuming.

A. What is a subpoena?

A subpoena is a document that is usually issued by the clerk of a court or an administrative agency. Sometimes, it is issued directly by an attorney of record in a court proceeding (see 1 C below). It commands an individual to provide information, either in person by testifying, or by producing documents or other tangible items.

A witness must respond to a lawful subpoena of which he or she has actual knowledge provided that payment of the fee and mileage has been tendered. A witness who receives a subpoena is generally entitled to a small fee for his or her appearance and a reimbursement for the mileage expenses related to the appearance. The failure to respond to a lawful subpoena can result in sanctions, penalties and/or fines, including being held in contempt of court.

B. Are there different types of subpoenas?

Yes. There are four basic categories: Subpoena for Documents, Deposition Subpoenas, Trial or Hearing Subpoenas, and Grand Jury Subpoenas.

(1) Subpoena for Documents

A subpoena requiring the production of documents is generally referred to as a *subpoena duces tecum*. It is usually issued at the request of a party in a court or administrative proceeding. It compels the recipient of the subpoena to produce specific documents, materials, or other tangible items relevant to the facts at issue in a pending action.

Many times, the party serving the subpoena may permit the witness to produce the requested documents rather than testifying in-person.[2]

Tip: If the party serving the subpoena allows your district to produce documents instead of testifying, secure written confirmation that no in-person testimony will be required.

(2) Deposition Subpoena

A deposition is used in a legal proceeding to gather information that may be relevant to a party's positions in a case by allowing the parties or their attorney to ask questions of a witness. A deposition subpoena requires the person to whom the subpoena is directed to appear as a witness at a certain location and time and provide sworn testimony or to produce certain documents or other tangible items.

(3) Trial or Hearing Subpoena

Similar to a deposition subpoena, a subpoena to appear at a trial or hearing requires a person to appear as a witness.

(4) Grand Jury Subpoena

Grand juries use subpoenas to gather the evidence they need to use in deciding whether crimes may have been committed. Both State and federal grand juries have the power to subpoena documents and physical evidence (e.g., books, videotapes, guns, etc.) and they may subpoena witnesses to testify before them.

Sometimes a grand jury subpoena includes instructions not to discuss the subpoena outside of the individuals needed to comply with its request(s). Not complying with these instructions can subject individuals to civil and sometimes criminal contempt of court, depending upon the rules of the court for which the grand jury is serving.

C. Who has the power to issue subpoenas?

Generally, subpoenas are issued by the clerk of a court or administrative bodies. An attorney admitted to practice in Illinois may also issue subpoenas in a pending action. Subpoenas are often issued on pre-printed blank forms, and the parties in the court or administrative proceeding (or their attorneys) are responsible for determining its terms (i.e., date, time and location), as well as to whom the subpoena will be issued. Some examples of common types of subpoenas include those issued in (a) domestic civil lawsuits (e.g., divorce or child custody proceedings), (b) personal injury or medical malpractice civil lawsuits, (c) juvenile criminal proceedings, (d) Ill. Department of Children and Family Services proceedings, and (e) Ill. State Board of Education certificate revocation proceedings.

2. General Considerations for Responding to Subpoenas

A. I was served with subpoena, what should I do?

(1) Do not ignore it! Courts and agencies expect compliance with subpoenas to the greatest extent possible within federal and State statutory obligations and limitations. Failure to comply can result in sanctions against the person subpoenaed or even the school district (see 1 A above). A response will depend upon many factors, including, but not limited to: (a) who or what entity or individual issued the subpoena, (b) the type of subpoena (see 1 B (1)-(4) above), (c) whether the matter is in Illinois or federal court, and (d) what the subpoena requests.

(2) Ensure that all district staff know whom to contact in the district office upon receipt of a subpoena, and that staff submit a copy of the subpoena to that person. Often times, subpoenas are sent directly to a staff member, and it is important that all subpoenas are routed to the district office so the district can follow a consistent practice when responding to them.

(3) Understand what the subpoena requests and requires your district and/or its staff to do. Call the board attorney and promptly provide him or her with a copy of the subpoena and any additional documents received. If you do not have authority to contact the board attorney, follow your district's chain of command to reach a person who does have authority to contact the board attorney. The board attorney will assess the subpoena to determine what information or records are sought and whether the request triggers any legal obligations under federal or State laws.

(4) Respond to the subpoena as the board attorney advises. Some subpoenas will request records that trigger legal obligations (e.g., personnel records, student records, mental health records, etc.). However, the board attorney will help your district honor the subpoena in a way that is consistent with the school's legal obligations under applicable federal and State law.

Tip: A school district and its staff rarely have a legal stake in the issues or outcomes of the matters requiring compliance with a subpoena.

B. Is the subpoena even valid?

Ensuring that the subpoena is in fact valid before complying with its terms is important. The board attorney can help you determine whether the subpoena is valid. Questions about validity occur frequently because subpoenas do not always come directly from a court or administrative body. Many individual attorneys now serve subpoenas.

Generally, a valid subpoena will:

(1) State the name of the court or administrative body that issued it.

(2) State the caption/title of the proceeding along with the case number.

(3) Provide the witness with the information necessary to allow an adequate response. This information includes the date, time and location when the appearance is required and/or documents must be provided. If the subpoena requires the witness to bring certain documents, these documents should be sufficiently described so that the witness knows what to bring.

(4) Be served on the witness. A subpoena can be served personally by causing a qualified process server to deliver a copy of the subpoena to the witness. Illinois court rules also allow a subpoena to be mailed to a witness, usually through return-receipt certified or registered mail.[3]

(5) Provide a witness fee for the appearance. Provide reimbursement to the witness for the mileage necessary to travel to the location of the deposition, trial or hearing.

Tip: If a subpoena is issued by a court outside of Illinois, consult the board attorney about whether or not the school district must respond to it.

C. How much time do I have to respond to the subpoena?

The answer depends upon whether the request is in Illinois state court or federal court. Illinois state court rules require service at least seven (7) days before the date on which the appearance is required for a deposition, hearing or trial.[4] Contrast this to federal court rules, which require service to simply allow "reasonable time for compliance."[5] When a subpoena compels an appearance at a deposition or the production of documents, the deadline to respond can generally be negotiated.

D. Do I really have to travel? How far?

Travel also depends upon many factors similar to the ones discussed above in 2 A (1). Following are some of the more common court rules that school districts may encounter:

(1) Illinois court rules for depositions:[6] If the witness is not a party to the lawsuit, then the deposition must occur in the county where the subpoenaed person resides. A legal entity (e.g., a school board or school district) also enjoys this same right to the deposition occurring in the county where it transacts business. If the witness is a party to the lawsuit, then the deposition must occur in the same county where the lawsuit is pending, but the court has the discretion to order the deposition to occur elsewhere in the state.

(2) Illinois court rules for trials or hearings:[7] A witness may be required to travel beyond the county where he or she resides. However, the party issuing the subpoena must pay the witness a fee for the appearance and reimburse the witness for his or her mileage necessary to travel to the location of the trial or hearing.[8]

(3) Federal court rules for depositions, hearings, trials or production of documents or tangible items:[9] A witness is required to travel if he or she can be served (a) within the court's jurisdiction, (b) within 100 miles of the location where a deposition, document production, hearing or trial is scheduled to occur, or (c) anywhere within the State. If the witness is not a party to the lawsuit and the subpoena requires him or her to incur substantial expense or travel over 100 miles to attend a trial, the court has the power to quash or modify the subpoena. To do this, the district will need assistance from the board attorney.

E. What can our school district do to avoid panic about responding to a subpoena, ensure sufficient time to assess it, plan for staff absences, and provide the required notices to those affected by it?

Discuss with the board attorney an efficient plan of action that works in your school district. Consider including this plan during annual training sessions with school personnel, so that they are aware of what to do if they receive a subpoena (see also 2 A (2)).

Other avenues that may work to ensure smooth responses include tactics that attorneys frequently use, such as prior established relationships from the school district's regular contact or dealings with local family courts, juvenile courts or other state or local agencies. Many attorneys also provide their clients template form letters that the attorney or school officials can modify.

3. General Considerations when Responding to Subpoenas for Personnel Records

Subpoenas for personnel records often require school districts to balance between the following competing obligations: compliance with the directives of the subpoena and the standing requirements imposed by applicable personnel records laws. Common laws that require this balance are the Ill. Freedom of Information Act (FOIA), the Ill. Personnel Record Review Act (PRRA), and 105 ILCS 5/24A-7.1 (prohibits the release of teacher, principal, and superintendent performance evaluations).

A. What are the competing obligations between FOIA and subpoenas that request personnel records?

Sometimes, a subpoena requests information that would be exempt from disclosure if the same information was the subject of a FOIA request. Because of this, school officials can mistakenly believe that the school district need not produce the records that the subpoena requests. Because a subpoena is managed differently than a FOIA request, the board attorney will need to help your district balance these competing interests (see 2 A (2) and (3)). Oftentimes a motion can be filed seeking to quash (reject or void) the subpoena based upon the same public policy concerns outlined in FOIA. When these motions are filed, many attorneys argue that releasing the requested information from personnel records would constitute a clearly unwarranted invasion of privacy or amount to a release of private information as defined by FOIA.[10]

Tip: Remember that a subpoena and a FOIA request are managed differently.

B. What are the competing obligations between PRRA and subpoenas requesting personnel records?

For more detailed information about the PRRA, see Employee Records; Understanding the Implementation of the Ill. Personnel Records Review Act, available at: www.iasb.com/IASB/media/School-Law/2021/Personnel_Records_Review_Act.pdf. The primary purpose of the PRRA[11] was to establish an employee's right to review his or her personnel records. It provides a number of remedies when violations occur and also:

(1) Describes certain kinds of information that may not be maintained in an employee's personnel records;

(2) Provides that information that is not in the employee's record may not be used against the employee in a judicial or administrative hearing (such as for dismissal);

(3) Requires the school district to allow an employee to inspect and copy the contents of his or her personnel records within seven working days of a written request;

(4) Establishes a procedure enabling the employee to correct, remove or explain information contained in the record;

(5) Exempts certain types of documents from employee inspection;

(6) Prohibits divulging certain types of information from the employee's record to third parties; and

(7) Provides procedures for divulging certain other types of information.

Number (6) generally requires school districts to balance between the competing obligations of compliance with the directives of the subpoena and the standing requirements imposed by the PRRA. Similar to the discussion above in 3 A about FOIA, the board attorney will need to assist your district with balancing these competing interests (see 2 A (2) and (3)). Sometimes the employee whose personnel records have been subpoenaed will need to hire his or her own attorney.

Sometimes the school district may be ordered to comply with the subpoena despite the PRRA. If this occurs, following the orders that are issued will likely prevent a finding that your district willfully violated the PRRA. When a district is ordered to comply despite the PRRA, the employee whose personnel records have been subpoenaed may need or wish to hire his or her own attorney to file an action in the appropriate circuit court to try and compel compliance with the PRRA's requirements.

> **Tip: Remember that the rights and remedies under this Act that would prevent full compliancewith a subpoena belong to the eligible employee not the district. In all likelihood, the school district or employee will have to comply with the subpoena in one form or another.**

C. What are some considerations for a school district if it receives a subpoena for records that, by law, it cannot release, e.g., 105 ILCS 5/24A-7.1 (prohibits the release of teacher, principal, and superintendent performance evaluations)?

Similar to the discussions above, the board attorney will need to assist your district with balancing compliance with the directives of the subpoena and the requirements of the law. While there is possibility that a school district could be ordered to comply with the subpoena despite the law, following orders that are issued will likely prevent a finding that your district willfully violated any law(s). If your district is ordered to comply with a subpoena despite a law that prohibits the subpoenaed records' release, the involved individual whose records have been subpoenaed may need or wish to hire his or her own attorney to file an action in the appropriate tribunal to try and compel compliance with the law prohibiting release.

D. What must the school district do before it provides subpoenaed personnel records?

(1) Understand what the subpoena requests (e.g., documents, testimony, both, etc.) and requires the witness to do (see 2 A (2) above). Manage compliance with the directives of the subpoena, the standing requirements imposed by any applicable laws, and the directions of any court or agency orders.

> **Tip: Follow all court or arbitrator's orders.**

(2) Comply with the PRRA[12] If no court or arbitrator in a legal action or arbitration has ordered the release of the records, the school district should follow the requirements of the Act and consult the board attorney with questions.

The Act does not allow the school district to release any disciplinary reports, letters of reprimand, or evidence of other disciplinary action that are more than four years old. (However, if the school district is ordered to do so by a judge in a legal action or arbitration, then the district and/or witness must follow that order despite the Act (see 3 C (1) above).

Note: this prohibition does not apply to information related to an incident or an attempted incident of sexual abuse or severe physical abuse.

The PRRA allows the school district to release disciplinary reports that are less than four years old when it sends written notice to the employee by first-class mail on or before the day when the information is disclosed.

Tip: While the Act now permits this required notice by electronic mail for FOIA requests that seek the same information, first-class mail is still required for a subpoena.[13]

Of course, there are a few exceptions to this written notice requirement. The school district may release records of disciplinary actions that are less than four years old without written notice if:

(a) an employee has signed an employment application with another employer waiving the written notice requirement; or

Tip: Many school districts incorporate waivers of notice in their employment applications, making it as easy as possible for previous employers to share relevant information about job applicants.

(b) the disclosure is ordered to a party in a legal action or arbitration; or

(c) the disclosure is requested by a government agency (e.g., the Ill. Department of Human Rights and the Equal Employment Opportunity Commission, etc.) involved in a claim or a complaint by an employee or a criminal investigation.

(3) Examine any public policy implications of FOIA.[14] The board attorney may have filed a motion to quash or modify the subpoena. Discuss with the board attorney whether to redact any information that FOIA would define as a clearly unwarranted invasion of privacy, private information, or personal information as defined by FOIA. (See the discussion in 3 A above.)

4. General Considerations for Responding to Subpoenas for Student Records and Information

Subpoenas for student records also require school districts to balance between competing obligations. The student records laws that most frequently require this balance are the Family Education Rights and Privacy Act (FERPA)[15] and Ill. School Student Records Act (ISSRA).[16] Other laws also provide confidentiality and privilege protection to student information, including the Ill. Mental Health and Developmental Disabilities Confidentiality Act (IMHDDCA)[17] (provides several age breaks for when the child is in control of who can see his or her records), and the Clinical Social Work and Social Work Practice Act.[18]

A. What are the competing obligations between student records, privilege and confidentiality laws and subpoenas that request student information that these laws protect?

Competing obligations generally arise when subpoenas request information about a student that is: (a) non-directory information, (b) directory information but the student's parent or the student has requested that the school district not release it, and (c) a statute specifically prohibits the release of the requested student records.

First, note that a subpoena that requests a student's *directory information*[19] does not usually present any competing obligations under FERPA or ISSRA. Directory information may be released, unless the student's parent or the student has requested that the school district not release it (see 4B below). In addition, students sometimes specifically request that their directory information not be released pursuant to subpoenas. These specific requests also create competing obligations for a school district to manage: compliance with the subpoena and compliance with the student's directive not to release directory information pursuant to a subpoena.The IMHDDCA prohibits compliance with a subpoena for records or communications that are covered under it,unless the subpoena is served with a "written order authorizing the issuance of the subpoena or the disclosure of the records.[20]

Many individuals and entities serving subpoenas are not familiar with the various competing obligations that school officials face when their districts are served with a subpoena for student records or information. Because the school district cannot ignore these subpoenas, it must: (a) either come to an agreement with the requester about compliance with the applicable laws, or (b) seek to have the subpoena quashed by the court or administrative agency with jurisdiction over the matter in which the subpoena was issued.

B. Our school district received a subpoena for a student's records. What should we do?

It depends upon what type of student records the subpoena is seeking and whether the school district has informed its community that directory information may be released in response to a subpoena. Your district will need to contact the board attorney for assistance. Here are four common scenarios that you'll likely contact the board attorney about:

(1) Subpoena seeking only directory information. If the student has no specific requests not to release it, then your district likely can respond to the subpoena after: (a) notifying the affected parents and/or students in writing, and (b) including the date of notification, parents' names, name of student, directory information to be released, and the scheduled date of release.

(2) Subpoenas seeking directory information that a parent or student has requested not be released.[21] Before releasing any of the requested information, consult with the board attorney. Your district will likely need to inform the party that issued the subpoena of (1) the requirements of the ISSRA[22] and (2) that in addition to ISSRA rights, students of all ages may also request that their directory information not be released pursuant to subpoenas. After informing the party that issued the subpoena of these competing interests, the party can then decide whether to seek a court order for release of the information. Depending upon the facts, some school board attorneys may help your district by filing a motion to (1) quash the subpoena, or (2) ask for a protective order before the appropriate court or tribunal, citing limitations under ISSRA or other laws. Sometimes the student's parents may also hire an attorney to file similar motions to enforce the student's or his or her parent's requests.

Tip: Maintain focus on compliance with the subpoena; objections to a valid subpoena for a student's information generally belong to the student or his or her parents.

(3) Subpoenas seeking non-directory student record information. Your district should not release the information without forwarding it to the board attorney because ISSRA states that student records are confidential, subject to some exceptions. A subpoena is not one of the listed exceptions. Some of the more common exceptions listed in ISSRA include:[23]

(a) Written authorization from the parent (or student, when the rights have transferred to the student) for the release of the records to a third party.

(b) Court orders. A court order is an order signed by a judge; a subpoena for records that is not signed by a judge is not a court order (but see the discussion in number 5, *Court Orders*, below). If a court order authorizes the release of student records, follow the additional steps below in the answer to question 5.B. For more discussion, about court orders, see number 5, *Court Orders*, below.

(c) Any person as specifically required by State or federal law.[24] Certain state and federal laws allow hearing officers, arbitrators, or agents of governmental entities (e.g., the Ill. State Board of Education, Ill. Department of Human Rights, or Office for Civil Rights) to issue subpoenas for records. Many attorneys interpret this provision to mean that the State or federal law should specifically outline which individual or agency is entitled to receive a student's records. School officials should consult the board attorney about this issue. **Note**: Do not always assume that your district is specifically required to release the requested records to an individual because that individual has authority to issue a subpoena.

(d) Subpoenas seeking directory information, but the district has not informed its community that directory information may be released in response to a subpoena. Examine your school district's definition of directory information within your district's school board policies, administrative procedures and student handbooks. If they do not discuss the fact that your school district may release directory information in response to a subpoena, releasing the directory information may present more challenges. If your school district does not indicate that directory information may be released in response to a valid subpoena, consult the board attorney before responding to the subpoena.

C. Our school district received a subpoena for a student's mental health and/or developmental disabilities records. What should we do?

Do not release these records. Immediately consult the board attorney for guidance. The IMHDDCA outlines extensive methods for handling these records. It states that "[n]o person shall comply with a subpoena for records or communications under the IMHDDCA unless the subpoena is accompanied by a *written order authorizing the issuance of the subpoena or the disclosure of the records*. For more discussion about written orders and court orders, see number 5, *Court Orders* below. Written consent of an individual who is entitled to inspect and copy a service recipient's record would also allow release; however a valid written consent must contain several statutory elements.

D. May our school district release biometric information pursuant to a subpoena?

No. A school district may not release biometric information about a student unless the disclosure is required by a court order.[25] Your district should follow the steps for 4 B(2) above by informing the requestor of the requirements of ISSRA.

E. May our school district release information communicated by a student, parent or guardian to a law enforcement professional working in the school?

ISSRA prohibits the disclosure of this without a court order.[26]

5. Court Orders

A. I had an attorney call me and say that a subpoena is the same as a court order and that I must comply. Is that correct?

No. A *court order* is a document signed by a judge. Subpoenas are typically signed by a court clerk, administrative agency official, or attorney of record in a legal proceeding before a court. Some attorneys hold the opinion that subpoenas are not court orders, even if they are on an official court form issued under the "clerk of the court," unless they are signed by a judge. Other attorneys hold the opinion that subpoenas are court orders because they are issued under the "clerk of the court." Sometimes a statute that governs release of the requested record defines court order. For example, IMHDDCA and ISSRA define "written court order" as a written order issued by a judge, authorizing the disclosure of the records or the issuance of the subpoena. Therefore, and depending upon the record requested and the statute that governs the record's release (e.g., ISSRA, IMHDDCA, etc.), a subpoena alone may not be the same as a court order and the subpoena may need to be accompanied by a separate court order.

Tip: Remember to look at the statute that governs the requested record's release.

B. I received a court order to release student records. Are there any additional requirements other than sending out the records?

Yes. Under Section 6(a)(5) of ISSRA, your district may release records pursuant to a court order provided your district gives the parent(s) prompt written notice of: (1) the order's terms, (2) the nature and substance of the information proposed to be released pursuant to the order, and (3) his or her right to have an opportunity to inspect and challenge the student record's contents pursuant to Section 7 of ISSRA. **Note**: Oftentimes school districts receive subpoenas for student records from an attorney (or a record service agency) in a medical malpractice case, a custody battle, or juvenile court proceedings. Subpoenas are not court orders, even if they are on an official court form, unless they are signed by a judge.

C. I received a court order to release student records, but the order only gives my district three days to comply. Can I just call the parent to notify them of the contents of the order? If not, how should I comply?

Calling the parent is not required by the statute, although as a practical matter, the parent could quickly give his or her written consent to the release after a call from the school. The statute requires a written notice with an opportunity for the parent to examine and contest a portion of the records in accordance with Section 7 of ISSRA. You should contact your district's attorney who may be able to (1) reach an agreement with the attorney requesting the court order to obtain a new one, or (2) file petitions seeking a new order that is in compliance with the statute.

D. I received an order giving me fifteen (15) days to comply, which is normally enough time to give the parent written notice. The parent, however, has requested a hearing pursuant to Section 7 of ISSRA, which will not be concluded in time. What should I do?

See answer to question 5 B above and contact the board attorney.

E. I received a fax copy of a court order to release records. How do I know that it is a valid order, or should I request a certified copy of the order?

Unless your district has been in court for all of the proceedings you cannot be 100% sure of the validity of an order. Except for suspicion of foul play, you can probably rely on an order being official, and can release the requested records in accordance with its provisions, as long as (1) the order is complete (i.e., the order does not have any blanks and is signed by a judge), (2) the circuit clerk's file stamp and date are on the face of the order, and (3) you comply with the requirement of written notice to the parent.

F. I received a court order to release records and the parents are divorced. The student was enrolled by his mother, who is the custodial parent. Am I in compliance with the notice requirement if I only give notice to her, as the person enrolling the student, or must I also give notice to the non-custodial parent?

By providing notice to the person enrolling the student, the District has complied with the requirements of ISSRA.

G. I received a subpoena for student records, with a copy of a court order stapled to it. The order stated "…the State's Attorney's office is authorized to subpoena the school records of [the minor student]… ." Is this a court order as required by Section 6(a)(5) of ISSRA?

Probably. The order can be construed as the authorization for the release of records to the named person, in this case the State's Attorney. The subpoena is merely the State's Attorney's method to request the records pursuant to the court order. Your district would still need to give notice to the parent of the fact that their child's records are subject to being released to the State's Attorney (depending on what is requested in the subpoena), and they are given an opportunity to inspect, copy, or challenge them.

6. Exceptions to Confidentiality of Student Records

A. The District received a subpoena from the Ill. Department of Children and Family Services (DCFS) for student records. Can the District send the records in response to the subpoena?

Generally, school districts should not immediately respond to subpoenas by sending the requested documents without contacting the board attorney. If the subpoena is issued to a staff member who filed a report concerning the child with DCFS, and the subpoena commands the attendance of the staff person at a hearing, the staff person should appear to testify. The Abused and Neglected Child Reporting Act requires persons who file a report of child abuse with DCFS to appear and fully testify at any hearing concerning the report. At the hearing, the staff member's testimony should be limited to what the staff member observed and did leading up to the report. Any testimony about student information or records must be authorized by a court order.

If the subpoena seeks the production of student records, the school district should contact the DCFS attorney (usually through the board attorney) advising of the need for a court order authorizing the disclosure. If DCFS responds that it does not need a court order authorizing records disclosure because it has taken custody of a student and stands in place of the parents, then DCFS should produce the court order granting it custody.

B. Under what circumstances can a school district disclose student records to judges or state's attorneys without parent consent or notice to the parent?

A school district may disclose student records to juvenile authorities who request such information (1) prior to adjudication of the student, and (2) after the juvenile authorities certify in writing that the information disclosed will not be further disclosed to any third party except as authorized by law or court order.

C. Who are "juvenile authorities?"

Juvenile authorities include: (1) judges of the circuit court (state court) and their authorized staff; (2) parties to a proceeding under the Juvenile Court Act of 1987 and their attorneys; (3) probation officers and court appointed advocates for the juvenile authorized by a judge; (4) any individual, public or private having custody of the minor; (5) individuals providing educational, medical, or mental health services to the child, when such information is necessary for determining the appropriate service or treatment to the minor; (6) potential placement providers; (7) law enforcement officers and prosecutors; (8) adult and juvenile prison review boards; (9) authorized military personnel; and (10) persons authorized by the court.

D. The District received a request for student information from a group calling itself a Protection & Advocacy Group. How should the District respond?

Protection & Advocacy Groups (P&A Groups) are authorized to assist the government in the enforcement of several federal laws aimed at the protection of individuals with disabilities. Some trial courts have ruled that school districts must provide the names and contact information of students and their parents when requested by P&A Groups. However, school officials must remember that a parent may still refuse release (i.e., by specifying his or her child's directory information may not be released pursuant to subpoena). State statutes may also prohibit release until certain conditions are met (e.g., ISSRA, IMHDDCA, etc.). The school district should not disclose any other student information to such groups without the written authorization of the student's parent or guardian.

[1] The following attorneys are members of this committee: Maryam Brotine, Illinois Association of School Boards; Jennifer Deutch, Hodges, Loizzi, Eisenhammer, Rodick & Kohn, LLP.; Kevin B. Gordon, Kriha Boucek, LLC.; Maureen Anichini Lemon, Ottosen DiNolfo Hasenbalg & Castaldo, Ltd.; J. Christian Miller, Miller, Tracy, Braun, Funk & Miller, Ltd.; James A. Petrungaro, Himes, Petrarca and Fester, Chtd.; Kimberly A. Small, Illinois Association of School Boards; Bernard Weiler, Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C.; Peter Wilson, Jr., Mickey, Wilson, Weiler, Renzi, Lenert & Julien, P.C. Reviewed by Brian Schwartz, Illinois Principals Association and the 2021 ICSA Executive Committee.

[2] Ill. Sup. Ct. R. 204(a)(4); Fed. R. Civ. P. 45(c)(2).

[3] Ill. Sup. Ct. R. 204(a); Ill. Sup. Ct. R. 237(a).

[4] Ill. Sup. Ct. R. 204(a); Ill. Sup. Ct. R. 237(a).

[5] Fed. R. Civ. P. 45(c)(3)(A).

[6] Ill. Sup. Ct. R. 203.

[7] Ill. Sup. Ct. R. 237.

[8] Ill. Sup. Ct. R. 237(a)(3).

[9] Fed. R. Civ. P. 45(b)(2).

[10] For definitions of clearly unwarranted invasion of privacy and private information, see 5 ILCS 40/.

[11] 820 ILCS 40/.

[12] 820 ILCS 40/.

[13] 820 ILCS 40/7 (2) and (4).

[14] 5 ILCS 140/ and see footnote 7 above.

[15] 20 U.S.C. § 1232g; 34 CFR Part 99.

[16] 105 ILCS 10/.

[17] 740 ILCS 110/4(a).

[18] 225 ILCS 20/.

[19] According to State law, student directory information is limited to the following: (1) identifying information: name, address, gender, grade level, birth date and place, and parents' names and addresses; (2) academic awards, degrees, and honors; (3) information relating to school-sponsored activities, organizations, and athletics; and (4) major field of study; and (5) period of attendance in the school.

[20] 740 ILCS 110/10(d).

[21] The right to request that information not be released transfers exclusively to the student upon the student's 18th birthday, graduation from high school, marriage or entry into military service, whichever occurs first. When any of these events occurs, the parent no longer may exercise any right with respect to the student's school records.

[22] 105 ILCS 10/5.

[23] For the entire list, see 105 ILCS 10/6.

[24] 105 ILCS 10/6(a)(6).

[25] 105 ILCS 5/10-10.40(5).

[26] 105 ILCS 10/5(f)(3).