

What to do if you are called as a witness...

Occasionally teachers are asked to testify under oath as a witness, often in child custody disputes. Here are some tips that we have gathered from Dean Pickett, Tempe Tri-District Legal Counsel, and Samantha Blevins AEA Legal Counsel.

Being asked to be a witness or to write a letter:

- DO NOT take sides in a custody dispute. Your responsibility is to remain neutral. Indicate that, if subpoenaed, you will only provide information about what you have personally observed about the students' behavior and grades at school and any interaction you have had with the parents. DO NOT write a letter in support of one parent or another.
- DO NOT talk to parents' lawyers (unless you receive a subpoena to appear for a deposition – more below on this). *If a parent asks you to do anything with regard to a custody dispute, i.e. to write a letter for the parent or lawyer, or to “just” talk to the lawyer, please immediately contact both your Principal or other supervisor, who will contact Dean Pickett, and your Kyrene Education Association (“KEA”) or the Kyrene Education Support Professionals Association (“KESPA”) President if a KEA or KESPA member in order to receive guidance.*

Receiving a Subpoena:

Subpoenas are served in a variety of ways. *District Policy does not allow individuals to be personally served on District property.* If the district legal counsel is aware that a subpoena is being or might be served on a District employee, he will contact the District employee to ask if the District employee desires to have the district accept service on the employee's behalf or if the employee prefers to have the subpoena served at his or her home. District legal counsel will remind the employee to contact their KEA or KESPA leadership if they want KEA or KESPA assistance with the subpoena.

If you receive a subpoena, write on the top of the first page the date, time and location where you received the subpoena and who served it on you – you are entitled to ask the process server who he or she is. Then immediately deliver a copy to your Principal or supervisor, who will then provide a copy to Dean Pickett. At this time, Dean Pickett will offer to meet with you by phone or in person at the Tri-District Legal Office at TUHSD to assist you by answering questions about the procedures you may encounter. If you are a member of the KEA or KESPA, your KEA or KESPA Representative will accompany you to the meeting and provide logistical and follow-up assistance.

Some subpoenas (usually but not always titled “Subpoena Duces Tecum”) ask that you provide a student's education records to an attorney or a party to the proceeding or that you bring them to court. It is critical that these kinds of subpoenas be brought to the attention of Dean Pickett promptly, as they probably require that specific notice of their receipt be provided to a parent prior to delivery of the documents under the Family Educational Rights and Privacy Act (“FERPA”).

You may be subpoenaed for a “deposition,” which is an interview under oath, usually in an attorney’s or court reporter’s office, or for an appearance to testify at a court hearing. **NOTIFY YOUR PRINCIPAL OR OTHER SUPERVISOR IF YOU ARE SERVED WITH A SUBPOENA.** If you must appear at a court hearing, you should check with the attorney or party who subpoenaed you, or the judge’s Judicial Assistant if you cannot reach the attorney or party, the day before you are scheduled to testify to make sure that the hearing has not been postponed.

Tips for Testifying in a Hearing or Deposition:

- Tell the truth!
- Listen carefully to each question. If you aren’t sure of an answer, don’t guess. If you don’t know, say that you don’t know; the only correct answer to each question is the truth, and if the truth is that you don’t know or don’t remember the answer, say so.
- Be sure you understand the question fully. Ask clarifying questions, or ask to have a question repeated, if necessary. (“What do you mean by ‘*Was he a good student?*?’” “What do you mean by ‘*Was he absent a lot?*?’”) Do not offer opinions; only testify to facts that you know.
- Take your time. Formulate your answer in your head before speaking.
- Keep your answers brief and do not volunteer information. If you are asked a “Yes” or “No” question, it is perfectly acceptable to provide a “Yes” or “No” answer.
- You are a “fact witness”, and questions asked of you should be limited to asking about facts which you have observed or know. You should not be asked for your opinion, especially in areas like, “*Do you think your student would be better off in the custody of the mother?*” You should courteously decline to answer opinion questions, with a response something like, “*I am not qualified to offer an opinion on that subject.*”
- Be aware of questions involving time and distance. If you make an estimate, make sure that everyone knows you are estimating.
- If an attorney or a party makes an objection to a question, whether before you can begin to answer or in the middle of your answer, or in a hearing the judge interrupts you while answering, just stop and wait for direction from the judge in court, or an attorney at a deposition.
- If you are asked a question, the answer to which can be provided based only on information you learned from a student’s education records, be sure you have discussed this matter with Dean Pickett first. Personal observations and comments by students are not covered by FERPA, but information which can be obtained only by accessing a student’s education records (for example, discipline history, special education diagnosis, specific dates of attendance) is confidential. You may be able to provide the answer depending on the circumstances of your questioning, but you should have legal guidance in advance to ensure the student’s privacy rights are honored when you do.
- Be courteous; do not engage in arguing or sarcasm.

**This information is being offered collaboratively by the
Kyrene Education Association, Kyrene Education Support Professionals Association and
the Kyrene School District.**