

School Law for Elementary Principals

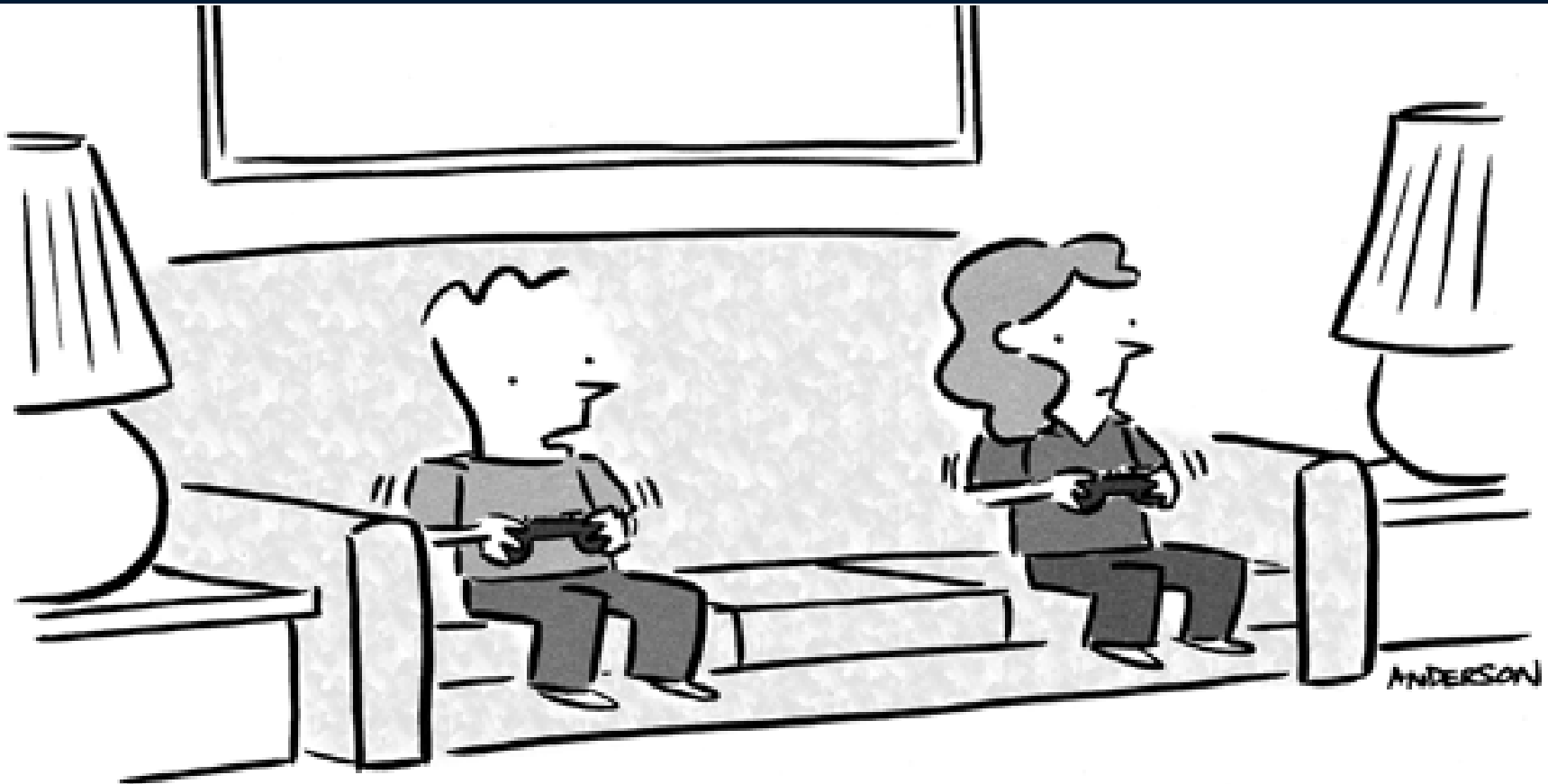
Karen Haase & Steve Williams

karen.haase@hardingshultz.com (402) 499-0547

steve.williams@hardingshultz.com (402) 499-1869

 **@KarenHaase**
@SteveIsEspan

Residency



"It's interesting - Mom hates early Christmas sales, but she *loves* early back-to-school sales."

The Joy of 79-215

- **Residents**
- **Homeless**
- **Contracted students**
- **Option Students**
- **State Wards**
- **Non-wards residentially placed**

Where does a kid go to school?



Residents

- **Students are residents of the district in which they reside**
- **Students are residents of any district where one of their “parents” reside**
- **Rule 19**

79-215(1) and (2)

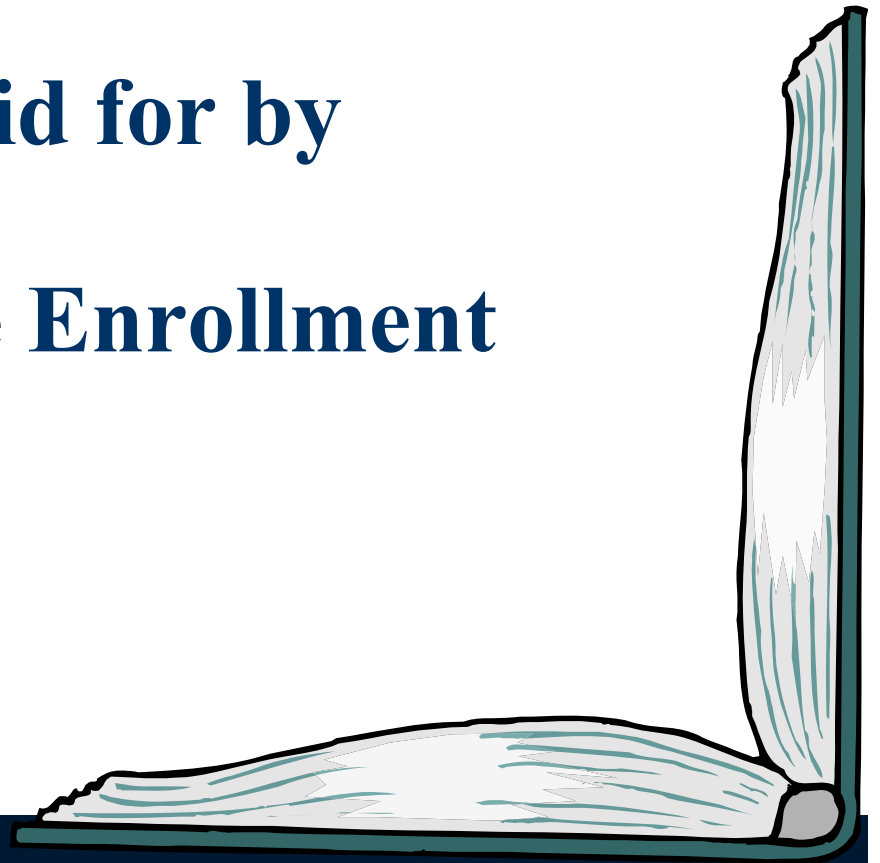
Homeless – Federal Def.

- **lack a fixed, regular, and adequate nighttime residence**
- **Includes:**
 - **Living with family or in motel**
 - **Abandoned**
 - **awaiting foster care**
 - **Living in cars, parks, etc**
 - **Migratory children**
 - **Abused, homeless, not yet in system**
 - **Aged out of foster and homeless**

McKinney-Vento Homeless Ass. Act

42 U.S.C. §11431 et. seq.

- **Rights of Homeless students**
 - **Right to Remain in School of Origin**
 - **Transportation (paid for by district of origin)**
 - **Right to Immediate Enrollment (w/o Records)**
 - **Liaisons**



L.R. v. Sheelton-Highspire Sch. Dist.,
54 IDELR 155 (M.D. Pa. 201)

- **Student moved in with relatives after house fire**
- **School**
 - **refused to enroll because not a “resident”**
 - **Student not “homeless” because slept in a house every night**
- **Court: met definition of homeless in McKinney-Vento**

Kid who moves during year

“A school board may allow a student whose residency in the district ceases during a school year to continue attending school in such district for the remainder of that school year”

79-215(4)

Option Students

- **Foster parents can't option**
 - **NDE**
- **Parents “eligible” for mileage if qualify for free lunch**
- **Option students placed out of district**

79-215(5) and (8)

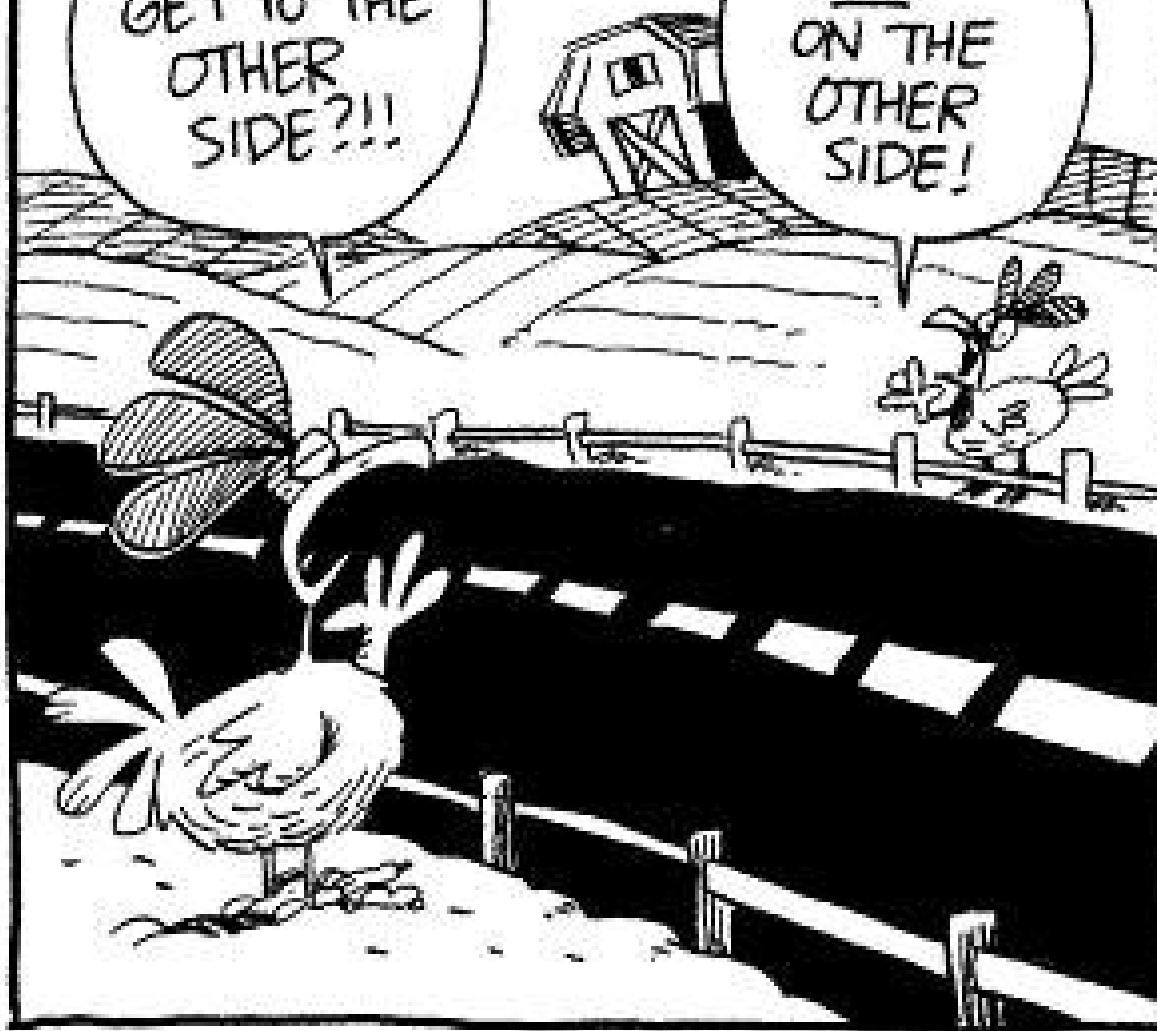
79-238

79-241

TWO STUPID CHICKENS:

HOW DO I
GET TO THE
OTHER
SIDE?!!

YOU
ARE
ON THE
OTHER
SIDE!



State Wards NOT in Foster

- **Remains resident**
- **State pays if:**
 - **Placed in different district**
 - **Placed in institution with SpEd program**
- **Resident dist. obligated for IEP**
- **Resident dist. lists on NSSRS**

79-215(9)

State Wards who ARE Foster

- **Remains resident of home dist.**
- **NOT resident of foster district**
- **Should continue attending original school building unless “best interest determination”**
- **Schools should NOT enroll foster kids as a matter of course**

79-215(9)

Fostering Connections to Success and Increasing Adoptions Act of 2008

- **Amend Title IV (Parts B and E) of the Social Security Act**
- **Provisions promoting education stability and enrollment for youth in foster care**
- **Required states to change child welfare laws**



Presumption: Same School

- **The child's case plan must include:**
“an assurance that the state has
coordinated with appropriate local
education agencies ... to ensure that
the child remains enrolled in the
school in which the child was
enrolled at the time of placement”

42 U.S.C.A. 675(1)(G)(ii).

Presumption: Same School

- If remaining in the same school is not in the best interest of the child, the child's case plan must include “assurances by the State agency and the local education agencies to provide immediate and appropriate enrollment in a new school, with all of the education records of the child provided to the school.”

42 U.S.C.A. 675(1)(G)(ii).



**"Laws are a lot like women. You can't
please 'em all the time."**

Foster Care Law Changes

- **Uninterrupted Scholars Act (fed)**
 - **Allows schools to release ed records without parental consent to child welfare agencies**
 - **Schools can disclose records under court order without notifying parents**

Truancy Reports to Co. Atty.

- **“May” report when**
 - Collaborative Plan has not worked, and
 - Child has been absent more than 20 days
- **Must notify child’s family in writing before referring to county attorney**
- **“Illness that makes attendance impossible or impracticable shall not be the basis for referral”**

Student Discipline



**"I wouldn't say your son is a bad child.
He's gifted at disruptive behavior."**

Placement vs. Discipline



"I'm afraid my brain is full and I can't learn any more. I'll need a few days off to dumb down."

Lancaster Co. (NE) Sch. Dist 001,

110 LRP 51715 (Sept. 10, 2010)

- **Student aggressive autistic 3rd grader**
- **As school year progressed, behavior deteriorated**
- **Student spent less time in general education classroom and more time in the calm down room, away from general education peers**
- **Parents sued, asserting that this constituted a disciplinary removal that required the school to make a manifestation determination.**

Lancaster Co. (NE) Sch. Dist 001,

110 LRP 51715 (Sept. 10, 2010)

■ H.O:

- School was not *punishing* bad behavior
- “Clearly behavioral problems at school were caused by and had a direct and substantial relationship to autism. . . . However it is equally clear that [the student] was not disciplined for those behaviors, and that there was not a change in placement as described by [section 16 of Rule 51].
- Time in “calm down room” was in IEP, therefore not a change in placement

Ogallala (NE) Public School,

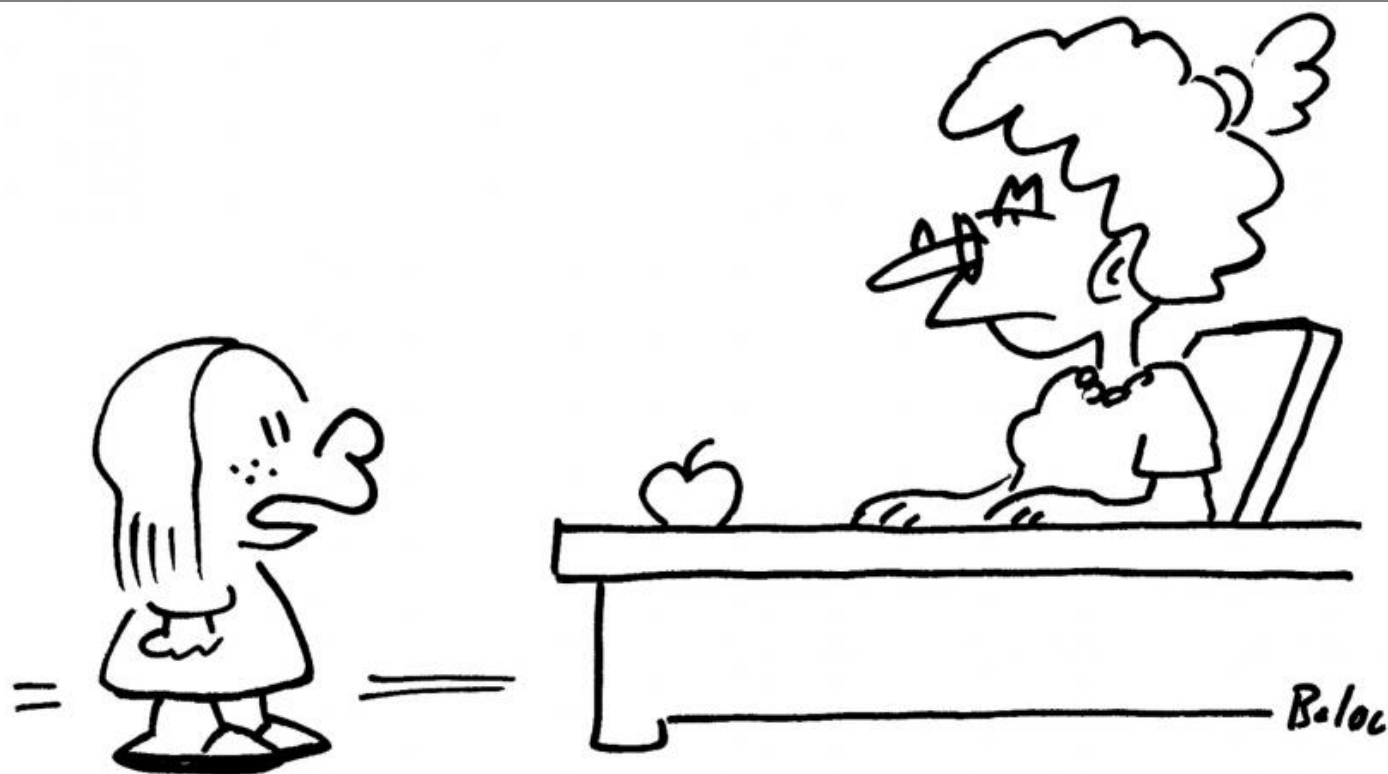
106 LRP 913 (Neb. SEA 2005)

- **Student with Down Syndrome transitioning from elementary to middle school**
- **Parents disagreed with program and methods**
- **Some sexualized misbehavior**
 - **Suspended for two days in September**
 - **Suspended for three days in October**
 - **Team determined that the misbehavior was a manifestation**
 - **Placed student in intensive social skills program**

Ogallala (NE) Public School,

106 LRP 913 (Neb. SEA 2005)

- **Parents sued claiming that the social skills program was a punitive removal**
- **School argued it was serving ed. needs**
- **H.O.: Placement, not disciplinary**
 - **“A plan needed to be put in place to deal with that behavior before it seriously interfered with [the student’s] educational progress. That plan was put into place, [the student’s] behavior improved, [the student] met the required goals, and the Respondent returned [the student] to the regular education classroom.”**



"I didn't do my homework because my attorney advised me never to put anything in writing."

First Amendment



TN Cheerleaders

- School changed school prayer practice
 - Prayed before games since 1930
- *Santa Fe*: can't pray over PA system
- Cheerleaders joined hands and prayed, crowd joined in
- TX: religious banners okay
- TN: student-led still okay
- CO: lawsuit re prayer in “open” per.

[i ♥ boobies]

- **3rd Cir:** can't ban the bands based on "lewd and vulgar" law
- **7th Cir:** can ban the bands if *Tinker* standard is met
- Settled 3rd Circuit attorneys fees application
- District paid \$385,000!

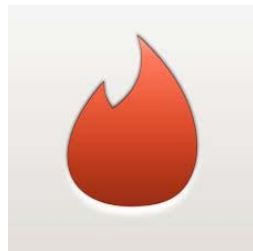
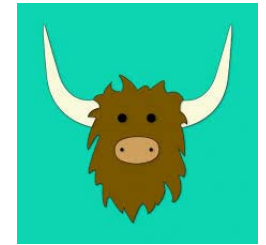
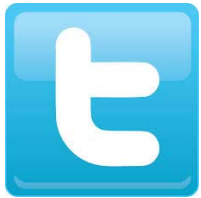
Munroe v. Central Bucks SD

- **Teacher blog: “Where are we going, and why are we in this handbasket?”**
 - **Called S’s “dunderheads” and “whiny, simpering grade-grubbers”**
 - **Parents were “breeding a disgusting brood of insolent, unappreciative, selfish brats”**

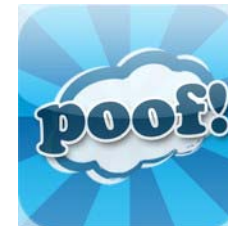
Munroe v. Central Bucks SD

- **Court: applied *Pickering***
 - **Disrupted effectiveness and trust**
 - **Some posts touched on “matters of public concern”**
 - **As a whole, it was “just rants”**
 - **District’s interest in smooth operation outweighed Munroe’s 1st Amendment rights**

Social Media

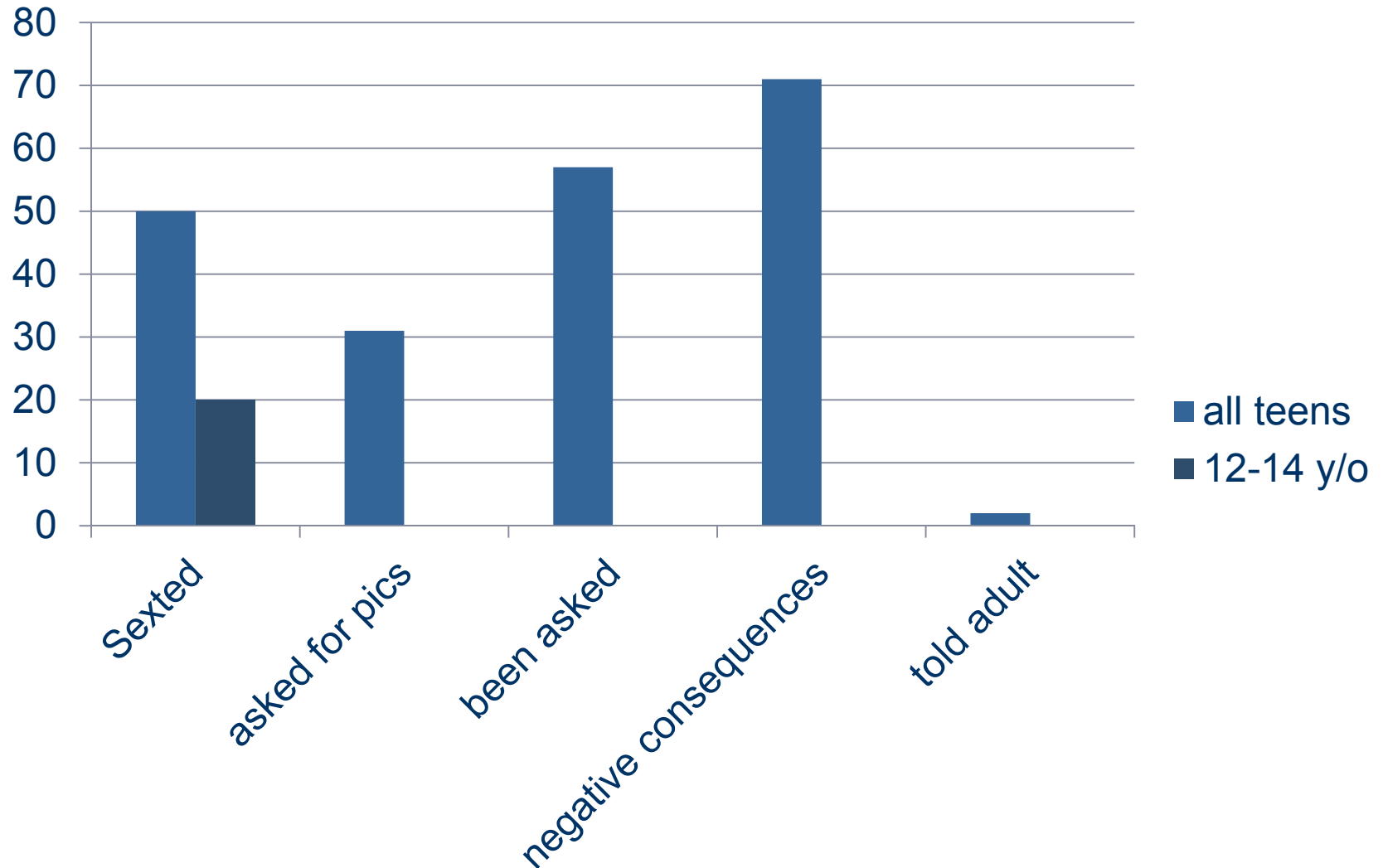


Secret



How Common is Sexting?

June 2014 survey by Drexel University

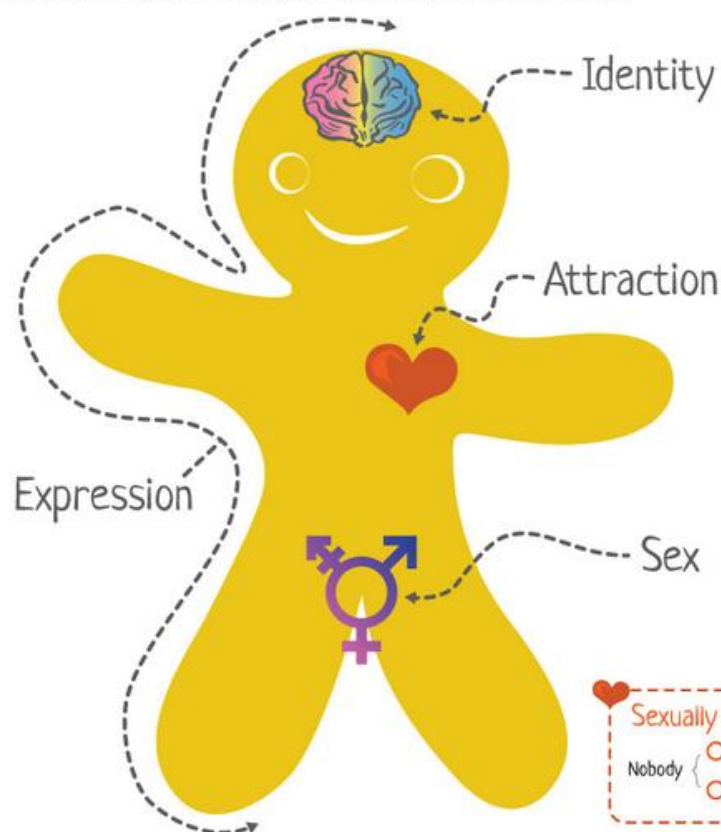


Transgender Students

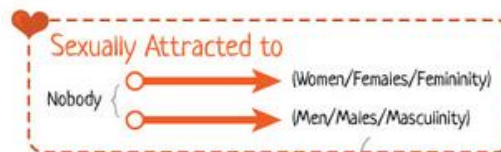
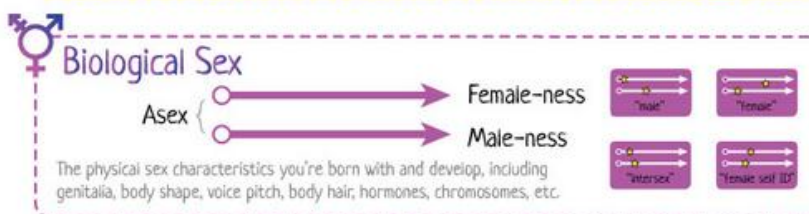
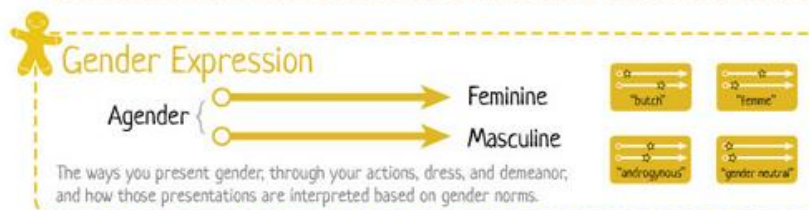
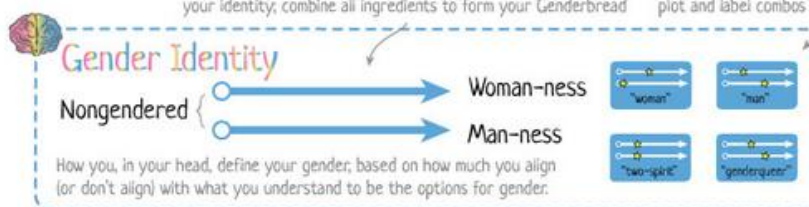
The Genderbread Person v3.1

Gender is one of those things everyone thinks they understand, but most people don't. Like *Inception*. Gender isn't binary. It's not either/or. In many cases it's both/and. A bit of this, a dash of that. This tasty little guide is meant to be an appetizer for gender understanding. It's okay if you're hungry for more. In fact, that's the idea.

by its pronounced **METRO**sexual.com



Plot a point on both continua in each category to represent your identity; combine all ingredients to form your Genderbread. 4 (of infinite) possible plot and label combos



In each grouping, circle all that apply to you and plot a point, depicting the aspects of gender toward which you experience attraction.

For a bigger bite, read more at <http://bit.ly/genderbread>

Downey Unified Sch. Dist.

■ **Facts**

- **Principal took makeup**
- **Asked S not to discuss identity**
- **Couldn't participate with peers in group discussions**
- **Forced to sit in back of the bus**
- **S called “gay,” “fag,” and “whore”**
- **Said S should transfer**

Downey Unified Sch. Dist.

■ OCR Settlement

- Hire an expert (probably OCR's...)
- Work with expert on “school climate”
- Permit S to use sex-designated facilities consistent with her identity
- Draft “Success Plan” for S
- Remove discipline from S file
- Amend policies to add “gender ID”
- Mandatory training and literature

CO “Princess”

- **16 y.o. student born male, identifies as female**
- **Nominated for homecoming princess by peers and won**
- **Parents: outraged**
- **Students: “happy for her”**
- **District: “respect students’ vote”**

Child Custody

- “Custody” includes “legal custody” and “physical custody”
- Legal – authority and responsibility for making fundamental decisions regarding child's welfare, including choices regarding education and health
- Physical – authority and responsibility regarding child's place of residence and exertion of continuous parenting time for significant periods of time

Child Custody

- **Joint legal** – mutual authority and responsibility for making mutual fundamental decisions regarding child's welfare, including choices regarding education and health
- **Joint physical** - mutual authority and responsibility regarding child's place of residence and exertion of continuous blocks of parenting time by both parents over child for significant periods of time.
- **Neb. Rev. Stat. § 43-2922.**

Child Custody Documents

- **Property Settlement Agreement**
- **Parenting Plan**
- **Temporary Orders**
- **Decree**

Misc. Custody Issues

- **Visits at school**
- **Students who live with grandparents, guardians or other relatives**
- **Children in custody of HHS**
- **Stepparents**
- **Student born to unmarried parents**
 - **Paternity established**
v.
■ **Paternity not established**

Access to Student Records

- **State**
 - **Section 42-381 – both parents continue to have “full and equal access” to education records unless court orders to contrary**
- **Federal**
 - **FERPA: Non-custodial parents have same rights as custodial**
 - **Unless there is evidence of a legally binding document that specifically revokes rights (34 C.F.R. 99.4)**

Access to Student Records

- **Written consent generally required for anyone other than parent, guardian, or student**
- **Special Education - IDEA gives rights to parents, foster parents, in loco parentis**

Custody, Access, & Parental Decisions

Parental rights resulting from custody arrangements:

TYPE OF CUSTODY	RIGHT TO INSPECT AND REVIEW EDUCATIONAL MATERIALS	RIGHT TO REQUEST AMENDMENT OR REMOVAL OF RECORDS	RIGHT TO ATTEND IEP MEETINGS	RIGHT TO CONSENT TO EVALUATIONS, TO IEP, AND IDEA MATTERS	RIGHT TO FILE FOR DUE PROCESS AND MEDIATION
SOLE CUSTODY (Legal Custody)	Yes	Yes	Yes	Yes	Yes
NON-CUSTODIAN (visitation or physical custody)	Yes	Yes	Yes	No	No
JOINT LEGAL CUSTODY	Both parents have this right	Both parents have this right	Both parents have this right	Each parent has right; Only one signature required	Each parent has this right

Access to Children at School

- **Custodial and non-custodial parents have equal access to children at school subject to any school policies UNLESS there is a court order limiting or eliminating access.**
- ***In Loco Parentis* rights are secondary to rights of parents.**
 - **Emergency exception**

Release of Children

- Same rules as access to children
- *Pauley v. Anchorage SD* , 31 P.3d 1284 (Ak. 2001)
- *L.R. v. School District of Philadelphia*, 214 U.S. Dist. Lexis 163338 (November 21, 2014)

Release of Children

Prevention

- **Require certified court orders – review for limitation or elimination of parental rights ONLY**
- **Note and document any restrictions**
- **Notify appropriate school personnel**

Release of Children

If Removal is Requested

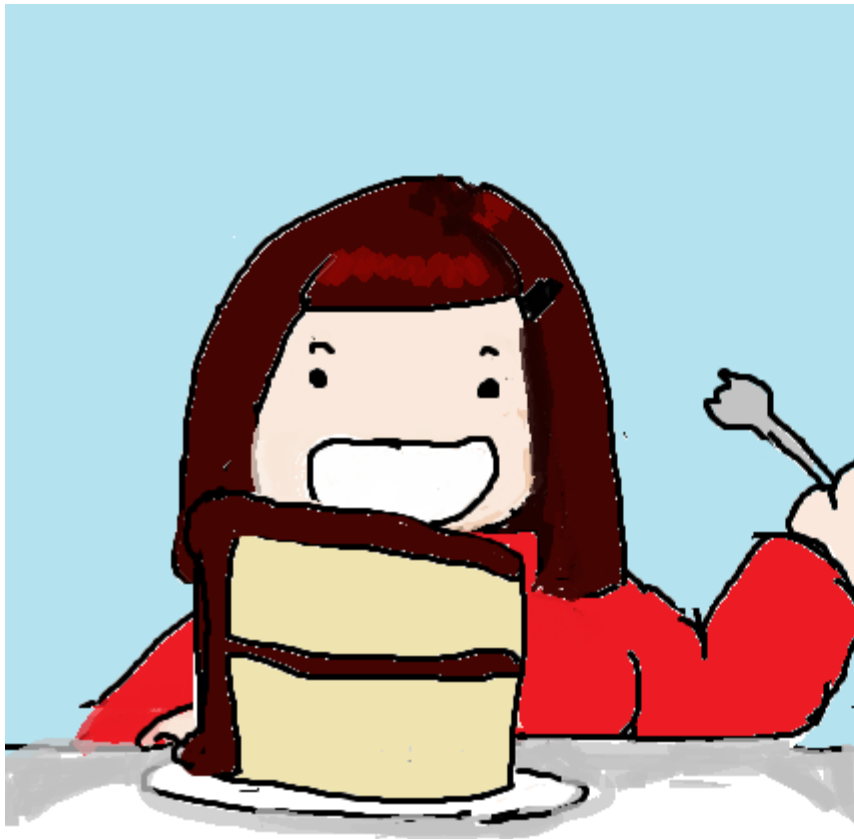
- **Verify identity of person seeking release**
- **Obtain approval for releases not previously authorized**
- **Contact parent if child is reluctant or you have any concerns**
- **Contact law enforcement if necessary**

Release of Children

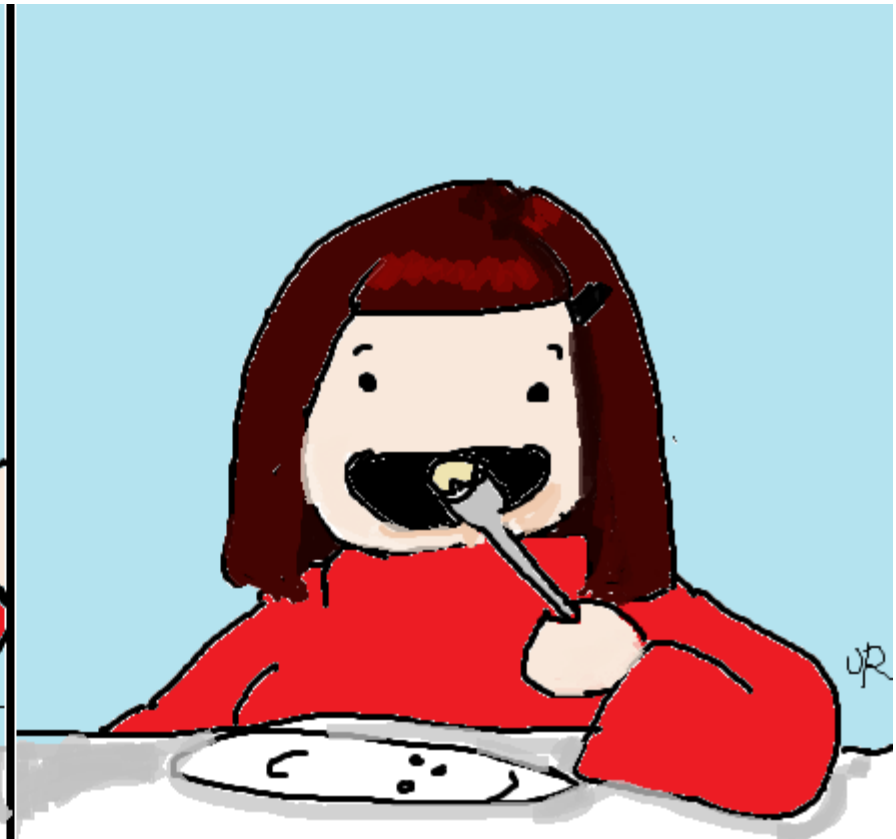
If Child Taken Without Permission

- **Contact law enforcement**
- **Notify parents and school administrators**
- **Comply with flagging laws or policies**

Let them eat cake!



OMG! YAY! CAKE!



I'm totally gonna eat you
too!

79-526(2) to the rescue

- **79-526(2)**
 - **Effective April 3, 2014 (LB 967)**

“(2) The school board may make expenditures for supplies, equipment, travel, meals, and lodging for school programs and activities, including extracurricular and interscholastic activities, appropriate for the benefit, government, and health of pupils enrolled in the school district.”

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