

GUIDELINES FOR SCHOOL EMPLOYEE COURT TESTIMONY

- A. Tell the truth.** Though this is obvious, it is the most important guideline!
- B. Generally you should confine your testimony to what you saw or heard or did or said.** Educators sometimes are inclined to theorize about motivation or to share their concerns about a student. This can be problematic. If asked by an attorney to speculate on something, it is okay to reply that you would rather not speculate. However, if directed by the judge to answer a question, even if such an answer requires you to speculate or give your opinion, you must do so.
- C. Wait for the question to be finished before you respond.** Most people respond too quickly because they think they know what is being asked. Wait for the question to be finished, pause, then formulate your response. Pausing allows you to think about the question and make sure you understand it.
- D. Make sure you understand the question.** Do not assume you know what the questioner is trying to ask if the question is unclear. Because educators are trained to teach, they often try to help the questioner by mentally completing or clarifying a question. This is dangerous in a hearing. When witnesses guess at a questioner's intent, they often give confusing or damaging answers in response. Tell the questioner you do not understand. Make the questioner be specific – it is the questioner's responsibility, not yours, to produce a comprehensible question.
- E. Don't guess.** If you hear yourself saying, *I assume that*, or *It is possible that*, or *I guess*, **STOP!** If you do not know or cannot recall the answer to a question simply say, *I don't remember* or *I don't know*.
- F. If a mistake is made, correct it.** If you say something that you later realize is wrong, correct it on the spot. If someone else quotes you incorrectly or asks questions based on incorrect assumptions, correct that information also.
- G. Yes or No Answers** Occasionally an attorney will insist upon a "yes" or "no" answer. If the question can be answered truthfully with a "yes" or "no", then you should comply with the request. Sometimes, however, a question cannot truthfully be answered with a simple "yes" or "no"; and, in that event, you should say that the answer requires further explanation and can't be answered with a "yes" or "no".
- H. Speak up.** Don't cover your mouth when you speak. Don't answer questions with nods or by shaking your head, particularly when a proceeding is being recorded.
- I. Do not disclose records, information obtained from records, or confidential communications from a student without the consent of the student or, if s/he is 18 years of age or under, from one of the student's parents or legal guardians.** Michigan Compiled Law prohibits the disclosure of student records, information obtained from student records, or confidential communications from students or juveniles unless consent of the person is provided, or, if the student or juvenile is under 18 years of age, from one of their parents or their legal guardian. Consent of both parents is not necessary, and the consenting parent does not have to be the custodial parent. A copy of Michigan Compiled Law 600.2165 is attached. If the proceeding occurs in court, you should make the judge aware of the statute and then follow the judge's instructions. At a deposition, no judge will be present. In that case, you should not disclose the record, information obtained from the record, or confidential communication unless a consent from the appropriate person has been signed (the student if over 18, a parent, or the legal guardian) or unless the appropriate person is present and waives the confidentiality on the record. An attorney for the student or parent cannot consent on behalf of the student or parent. Information from observations of the student would not generally be considered confidential. Information from private communications with the student, information from student records, or information obtained from student records would generally be considered confidential. If consent from the appropriate person is obtained, then you must answer the questions.
- J. Try to relax and be yourself.** You may be anxious about receiving a subpoena to testify. It is not uncommon to go to the courthouse and never get called on to testify. If you are called, you will do fine if you follow the above guidelines and be yourself.

Compiled by C. Gerard (with legal review by D. Churchill)