

Obtaining School Records in Child Molestation Cases

Just as a defendant accused of a sex offense can obtain records from [DFCS](#) and the [juvenile courts](#), he can also obtain an alleged victim's school records. These records can often be used to show that an alleged child molestation victim did not exhibit the behavior or decline in school performance that is typically expected with a child that has been abused.

At or before arraignment, the defense should file a "Motion for the Issuance of Subpoena to Obtain Records" within the appropriate county's public school system. The motion should request that the school system produce the alleged victim's complete file for the defense or, in the alternative, request that the court conduct an *in camera* inspection to consider whether the records are necessary for the determination of an issue before the court. As a basis for this review, the defense should cite the existence of exculpatory evidence that the defense intends to use to rebut the state's allegations of abuse.

Defendants may seek to offer evidence contained in school records for a number of purposes. In *Coalson v. State*, 251 Ga. App. 761, 555 S.E.2d 128 (2001), the trial court authorized the admission of school records to determine the impact the alleged incidents of abuse had on the alleged victim's grades. In *Phyfer v. State*, 259 Ga. App. 356, 577 S.E.2d 56 (2003), the defense sought to introduce evidence of the alleged victim's attendance records in an attempt to impeach the testimony of one of the state's witnesses.

Defendants cannot introduce evidence contained in the alleged victim's school records that is not directly related to the allegations of abuse. See *Lively v. State*, 157 Ga. App. 419, 278 S.E.2d 67 (1981) (court did not permit defense to offer evidence contained in the alleged victim's school records that detailed her disciplinary problems).

Similarly, defendants cannot introduce evidence contained in the alleged victim's school records to prove general deceitfulness. In *Jones v. State*, 226 Ga. App. 420, 487 S.E.2d 56 (1997), the defense sought to introduce the alleged victim's school records and other documents to show she had a propensity to lie. The court ruled *in limine* to prohibit the introduction of evidence that referenced any alleged untruths told by the victim unless they related to her allegations of molestation.

If, after conducting an *in camera* review, the trial court judge determines the school records contain no exculpatory evidence, the defendant can challenge the ruling. If the defendant believes the judge wrongfully withheld some documents, the burden is on the defendant to show what materials were suppressed and how they were relevant to an issue in the case. See *Stephens v. State*, 226 Ga. App. 420, 487 S.E.2d 56 (2011) (trial court's decision to exclude school records affirmed when defendant merely speculated that the records requested contained exculpatory information). Therefore, it is imperative for criminal defense attorneys to request that the records be filed under seal with the court so that they will later be available for the appellate court.