

11. Law Enforcement Officer Asks a High School Coach for Information about Three Students Allegedly Involved in a Sexual Assault on Another Student



On Monday morning, a high school football coach hears rumors that three students he coaches sexually assaulted a female student from their school at a party over the weekend. Before the coach is able to notify the principal about the rumors, he receives a phone call from an officer in the community's police department. The police officer asks the coach to tell her what he knows about the three students, what he has heard about the alleged assault, and whether the students have ever been in trouble at school or involved in anything like this before.

Who has the information?

The high school football coach.

Who wants the information?

The police officer.

What information does the requester want?

The police officer wants to know what the coach knows about the alleged sexual assault, his general knowledge of the three students allegedly involved, and their school disciplinary history.

What does the requester want to do with the information?

We do not know from the facts, but presumably the police officer wants the information for her investigation of the alleged incident.

What do the laws permit, and what do they prohibit?

FERPA does not address the disclosure of information that is not contained in a student's education record, including the personal knowledge and observations of school staff.

In general, to share information contained in a student's education record, parental authorization is required—but a FERPA exception to the need for parental consent *may* apply here. FERPA allows school officials to release information to an individual in connection with a health or safety emergency if that person's knowledge of the information is necessary to protect the health or safety of a student or others. If a school

official determines that there is an *articulable and significant threat to the health or safety of the student or other individuals* and that a party *needs the information to protect the health or safety of the student or other individuals*, the school may disclose the information to appropriate parties without parental consent.

Another FERPA provision that permits disclosure without parental consent is when the disclosure is necessary to comply with a lawfully issued subpoena or judicial order. In general, a school must make a reasonable effort to notify the parent or eligible student of the subpoena or judicial order before complying with it in order to allow the parent or eligible student to seek protective action, unless certain exceptions apply.

State law may also require school officials to disclose information about a student to law enforcement in connection with a law enforcement investigation.

How can the school personnel proceed legally in this situation?

SHARE INFORMATION FROM PERSONAL KNOWLEDGE THAT IS NOT CONTAINED IN EDUCATION RECORDS

The football coach may share with the police officer what he has heard about the alleged incident. Because he is being asked his personal knowledge of the incident based on what he has heard from others, FERPA does not require parental authorization for such disclosure.

OBTAIN PARENTAL CONSENT

The school may ask the students' parents for their consent to share information from the students' education records with the police officer. Under FERPA, written authorization to release education records must do the following:

- Specify the records to be disclosed
- State the purpose of the disclosure
- Identify the party or class of parties to whom disclosure is to be made
- Be signed and dated by the student's parent or guardian

OBTAIN A COURT ORDER TO SHARE THE INFORMATION

If the school is unable to get parental consent, the police officer could get a subpoena for the information. Like the consent form, the court order should be specific in nature. Upon receipt of the court order, the school must make a "reasonable effort" to notify the students' parents of the order before complying.