

## 1. Principal Asks a School Mental Health Counselor to Share Information About a Student Who May Have Been Arrested



A high school principal hears a rumor that one of his students was arrested for underage drinking and possession of drugs at a party over the weekend. This student has been aggressive toward other students in the past and has a history of self-harming behaviors. The principal has seen the student talking in the hallway with a mental health counselor who's employed by the school district. The principal believes that the counselor may be working with the student.

On Monday morning, the principal approaches the mental health counselor, tells her that he heard the student was arrested, and says he believes that she's working with the student. He asks the counselor if she has any details about the arrest, how her sessions with the student have been going, and if she has any suggestions about what the school can do to support the student. He explains that he's asking because he believes that if he has more information, he can work with others in the school to make sure the student is getting the supports and services he needs.

### Who has the information?

The high school's mental health counselor, who is employed by the school district.

### Who wants the information?

The high school principal.

### What information does the requester want?

The principal wants to know:

- What the counselor knows about the alleged arrest
- How the counselor's sessions with the student are going
- Whether the counselor has any suggestions for how the school can help the student

### What does the requester want to do with the information?

The principal says he wants the information so he can work with others in the school to make sure the student is receiving appropriate supports and services.

## Which laws are relevant in this situation?

Because the on-site mental health counselor is a school district employee, her ability to share information is governed by FERPA. (If she were employed by a health care provider outside the school, it's likely that she would have to follow HIPAA confidentiality rules.)

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

According to FERPA, the student's parent or guardian has access to the student's records and typically must give consent for those records to be disclosed to a third party. To share information with the principal, the mental health counselor needs a signed authorization from the student's parent or guardian. 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

FERPA stipulates that school officials may disclose information from a student's education record to other school officials who have a legitimate educational interest in the information, without first obtaining parental consent. The school district must define who is a *school official* (typically includes teachers, teacher aides, health and counseling staff, and administrative staff) and what is meant by a *legitimate educational interest* (e.g., providing health care or counseling to a student and the student's family). A school official typically has a legitimate educational interest if the official needs to review an education record in order to fulfill his or her professional responsibility.

In order for this exception to the parental consent requirement to apply in this case example, the school must have provided parents with an annual written notice that specifies its criteria for determining who is a school official and what is a legitimate educational interest. Additionally, if the principal (and any other individuals) in this case example were to receive information under this exception, they would have to be informed that they cannot re-release the information except in accordance with FERPA.

## How can school personnel proceed legally to get the student help?

### OBTAIN PARENTAL CONSENT

The mental health counselor can invite the student's parent to discuss the situation with her and the principal and ask the parent to sign a consent form allowing the counselor to share information with principal. The consent form must conform to the requirements for written authorization described above.

### USE THE LEGITIMATE EDUCATIONAL INTEREST EXCEPTION

If the school's annual notification to parents included an explanation that this type of disclosure is for a legitimate educational interest, parental authorization would not be necessary.

## **OPT NOT TO DISCLOSE CONFIDENTIAL INFORMATION REVEALED IN COUNSELING**

The counselor can advise the principal how to support the student without disclosing confidential information that the student revealed in counseling. Because the counselor's suggestions to the principal for how to support the student would not be part of the student's education record, they could be offered without obtaining parental consent. However, it is important to note that if the principal recorded any of the information obtained from the counselor in the student's record, that information becomes part of the education record, and parental authorization would be required for any further disclosure.