

13. Principal Considers Asking a Tribal School on a Reservation for Information About a Student Who Used to Attend the Tribal School



A sixth grade teacher at a middle school located near an American Indian reservation has noticed signs that one of the children in her class may have a learning disability. The child, who is in foster care, is a member of the nearby tribe; she recently transferred from a tribal school located on the reservation.

The teacher meets with the principal and explains that she needs to review the student's records from the reservation school the student used to attend in order to get a better handle on the student's learning issues, including whether she has ever been diagnosed with a learning disability. The principal is hesitant to contact the tribal school because he doesn't know what confidentiality laws apply.

Who has the information?

A tribal school located on a reservation.

Who wants the information?

A sixth grade teacher in a school near the reservation.

What information does the requester want?

The student's school records.

What does the requester want to do with the information?

She wants to understand the student's previous experience in school, including whether the student has a diagnosed learning disability, most likely to determine whether the student needs learning supports and services.

Which laws are relevant in this situation?

Tribes have their own legal system and laws and as such are sovereign entities; the children living on the reservation are subject to tribal jurisdiction. However, if the tribal school that the child used to attend receives federal funds, FERPA, which applies to public and private schools that receive federal funds, would apply to the child's school records. If the child does have a learning disability, any treatment the child received outside the school may be governed by HIPAA. We can't tell from the facts given.

The Indian Child Welfare Act (ICWA) applies to children who are members of federally recognized American Indian tribes and who are in a state's child welfare system. ICWA does not address information sharing. However, ICWA does enable states and tribes to enter into agreements about how ICWA will be carried out. Some states have a memorandum of understanding or agreement that addresses how information and data may be shared. For example, Minnesota has a provision in its ICWA law that allows for investigative child welfare data to be shared with tribes. Professionals should consult their school district's or agency's legal counsel to determine whether such an agreement exists in their state.

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

The tribal school's ability to disclose information from the student's education record is probably governed by FERPA, or perhaps by an agreement with the state in which the tribe is located.

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

The principal can ask the child's biological parent to sign a consent form for the school to obtain the student's records from the tribal school she formerly attended. 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

The principal could also contact the tribal school and ask to meet with the school's social worker to discuss the best way to work together should similar situations arise in the future.