

14. Multi-Agency Meeting to Develop a Re-Entry/Transition Plan for a Youth in a Residential Treatment Facility



A 15-year-old youth is living in a residential treatment facility (RTF) as a result of a delinquency adjudication. (RTFs are highly structured residential programs for court-ordered delinquent youth with mental health, behavioral health, and/or substance abuse issues.) At the last hearing, the RTF staff told the judge that the youth would be discharged in a month. The youth has been involved in the child welfare system since age 7 and has an open child welfare case.

The youth's child welfare case manager convenes a multi-agency team meeting to develop a re-entry/transition plan for the youth's return to the community. The following individuals attend the meeting: the child welfare case manager, a representative of the RTF, a teacher and a guidance counselor from the high school the youth used to attend, a community-based mental health counselor who treated the youth before his placement in the RTF, and a juvenile probation officer. The meeting participants are uncertain about what information they can share with and request from the others.

Who has the information?

Every person at the meeting has some information about the youth.

Who wants the information?

The child welfare case manager and everyone else at the meeting.

What information does the requester want?

We don't know for sure. Presumably, the case manager would like to know about the youth's progress in the RTF (including his mental health treatment and educational progress), his ongoing treatment needs, and the treatment and education options that will be available to him once he returns to the community.

What does the requester want to do with the information?

The case manager wants to create a re-entry/transition plan to assist the youth's return to the community after discharge from the RTF. It is likely that the plan would identify an appropriate placement for the youth.

Which laws are relevant in this situation?

The youth's education records from the RTF school and local high school are subject to FERPA. Treatment information from the RTF and outpatient mental health provider is subject to HIPAA. There may also be state laws that govern the disclosure of mental health records. The ability of the probation officer and the child welfare case manager to share information from their respective case files is subject to state law.

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

The Uninterrupted Scholars Act (USA), which amended FERPA, allows the child welfare case manager to obtain the youth's education records. Under the USA-amended FERPA, the child welfare case manager, who has the right to access a youth's case plan under state law and whose agency has legal responsibility for the care of the youth, can access the youth's education record. The child welfare case manager may then disclose the record to individuals or entities engaged in addressing the youth's education needs if the child welfare agency authorizes those individuals or entities to receive education records. As long as the youth's education record was disclosed to other members of this transition team for the purpose of addressing the youth's education needs and the child welfare agency authorizes the other members of the transition team to receive such records, no consent from the youth's parent is required.

Also under the USA amendment to FERPA, a school can release education records to any party listed in a court order issued in a child welfare case, such as a child welfare agency or child welfare caseworker, a caretaker, the youth's attorney, or a court-appointed special advocate. Schools do not need to provide notice to parents prior to the release of records in accordance with the court order exception when the parents are parties to the child welfare case and, therefore, are already on notice that the youth's school records will be shared.

If the USA criteria described above are *not* met, in order for the child welfare case manager to disclose the youth's education record to other members of the team, FERPA requires a signed consent from the youth's parent (or education surrogate). Under FERPA, the consent form must be dated and must state the following:

- What information will be shared
- With whom it will be shared
- For what purpose the information will be shared
- That the information will not be disclosed to anyone else without the parent's consent
- How long the consent is valid
- That the parent may void the consent at any time

Without parental consent, school officials may release information contained in the youth's education record in response to a court order or subpoena. Before releasing the information, they must make a "reasonable effort" to notify the parent of the court order or subpoena.

HIPAA permits disclosure of protected health information with consent and, in limited circumstances, without consent. In relation to unemancipated minors, HIPAA states that if state law permits minors to consent to their

own mental health treatment, they are authorized to consent to the release of information related to the treatment. However, if the minor's parent rather than the minor consented to the mental health treatment, the parent is authorized to consent to the disclosure of the information. Without a signed consent form, the agencies present at the meeting can seek to obtain a court order to obtain the youth's mental health records.

How can the professionals involved proceed legally to get the youth help?

OBTAIN CONSENT

The first step would be to seek consent from the youth's parent or the youth himself (whoever is authorized under state law to provide consent) to share information about the youth's mental health treatment at the multi-disciplinary team meeting. Under HIPAA, the consent must be signed and dated and must contain the following:

- A specific description of the protected health information to be released
- Who is authorized to disclose the information
- Who is authorized to receive the information
- How long the consent is valid
- A statement of the right to revoke consent and the process to do so
- A statement of the purpose of the disclosure

If state law permitted the youth to consent to mental health treatment both in the RTF and through the outpatient mental health provider, the youth may consent to the release of that information at the meeting. However, if the youth's parent rather than the youth himself consented to the treatment, the parent is authorized to provide consent for the information to be shared at the team meeting.

DISCLOSE THE INFORMATION WITHOUT PARENTAL CONSENT IN ACCORDANCE WITH THE USA

According to the USA, the child welfare case manager may access the youth's education record and disclose the record to authorized individuals or entities engaged in addressing the youth's education needs. As long as the disclosure to other members of the transition team is for the purpose of addressing the youth's education needs, and the child welfare agency authorizes the other members of the team to receive the record, no consent is required.

OBTAIN A COURT ORDER OR SUBPOENA

The school and other parties may share information about the youth if compelled by a court order or subpoena. If the school receives such a subpoena or court order, it must make a reasonable effort to notify the youth's parent prior to disclosing the information.