

15. Youth Agency Case Manager Asks a High School Guidance Counselor, a Mental Health Counselor, and a Probation Officer for Information About a Child Considered At Risk

A case manager from a community-based youth-serving agency has been asked by a high school to work with a student who is considered at risk. The student has a history of poor grades and attendance and disciplinary problems. In addition, he has been adjudicated delinquent, and the juvenile court has assigned a probation officer to work with him.



The case manager believes that she could better serve the adolescent if she had information about his strengths and needs from his guidance counselor, the community-based mental health counselor, and the probation officer. She calls these individuals, explaining that she'd like to talk with them about the youth; her goal is to have all four parties meet to develop an interagency support and treatment plan for the youth. However, each person the case manager calls refuses to share information about the youth, citing confidentiality concerns.

Who has the information?

The high school guidance counselor, the mental health counselor, and the probation officer.

Who wants the information?

The case manager.

What information does the requester want?

She wants information about the youth's strengths and needs.

What does the requester want to do with the information?

She wants to use the information to develop an interagency support and treatment plan for the youth.

Which laws are relevant in this situation?

Disclosure of information in the student's education record by the school's guidance counselor is governed by FERPA.

Since the mental health counselor is employed by a community agency, it is likely that he or she has to follow HIPAA rules with regard to the release of information about the youth. There may also be state laws governing the release of mental health records.

Disclosure of information by the probation officer is governed by state law related to the confidentiality of juvenile court and/or probation records.

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

FERPA covers only information contained in a student's education record. The school may disclose information contained in the youth's education record only after obtaining signed authorization from the youth's parent. However, the guidance counselor's (and other school staff's) personal observations and personal knowledge of the youth are not covered by FERPA.

HIPAA permits disclosure of information with signed authorization from a parent (or from the youth, if the youth legally consented to the mental health services).

State law governs the disclosure of information by the probation officer.

How can the case manager proceed legally to get the youth help?

OBTAIN CONSENT

The case manager can seek a parent's written consent to access the youth's education record from the school. 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 case manager can also seek parental consent for release of the youth's mental health records. (If the youth legally consented to mental health treatment, he would be authorized to provide consent.) 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

OBTAIN A COURT ORDER

Without signed consent, the case manager may seek a court order from the delinquency court directing the school and the community mental health provider to release the youth's records to the case manager. Under FERPA, the school must first make a reasonable effort to inform the youth's parent about the court order before releasing the records.

ACCESSING PROBATION RECORDS

The case manager must consult state law to determine if and how she may legally obtain the youth's probation records.