

## 6. Sheriff's Department and Court Intake Officer Ask School for Information About Students Involved in a Fight at School<sup>1</sup>



Two high school students get into a fight in the school hallway. A School Resource Officer (SRO), who is employed by the sheriff's department, breaks up the fight and talks to the students involved and some witnesses. The SRO then files an incident report with the assistant principal and keeps a copy for herself.

One of the students involved in the fight contacts the sheriff's department, saying that he wants to press charges against the other student. The sheriff's department calls the SRO and requests a copy of the incident report she prepared.

The alleged aggressor is arrested and given a court date. An intake officer from the juvenile court contacts the student's guidance counselor and requests the alleged aggressor's grades and attendance and disciplinary records.

### Who has the information?

The SRO and the guidance counselor.

### Who wants the information?

The sheriff's department and the court intake officer.

### What information does the requester want?

The sheriff's department wants a copy of the incident report prepared by the SRO. The court intake officer wants to see the alleged aggressor's grades and attendance and disciplinary records.

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

It is not entirely clear, but presumably the sheriff's department is seeking the SRO's report as part of its ongoing investigation of the incident. The court intake officer is likely seeking information from the student's education record to provide to the judge assigned to the case. The judge, in turn, may rely on this information to make decisions about the youth.

<sup>1</sup> This case example was adapted from one created by Bernard James, J.D., Professor of Law, Pepperdine University Law School.

## Which laws are relevant in this situation?

FERPA governs the disclosure of records by the SRO and the school counselor.

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

Regarding the SRO and the sheriff's department: According to FERPA, records that a law enforcement unit of a school creates and maintains for school law enforcement purposes are not considered part of a student's education record. Thus, schools may disclose information from school law enforcement unit records to a third party without first obtaining parental consent.

Regarding the guidance counselor and the juvenile court intake officer: FERPA permits individual states to enact legislation permitting disclosure under a juvenile justice exception. Under this exception, a state statute may permit schools to release records to juvenile justice personnel in order to assist system-involved youth prior to adjudication *if* the recipient certifies in writing that he or she will not disclose the information to a third party without first obtaining parental consent.

## How can school personnel proceed legally in this situation?

### OBTAIN PARENTAL CONSENT

The school could attempt to get consent from the parent of the alleged aggressor to share information with the court intake 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

If the school is unable to get parental consent, the court officer could get a court order requiring the school to disclose the alleged aggressor's grades and attendance and disciplinary records. 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 alleged aggressor's parent of the order before complying. However, the parent would not be able to prevent the school from sharing the information with the court intake officer.

### USE THE LAW ENFORCEMENT UNIT EXCEPTION

The SRO conducted her own investigation and recorded the results in an incident report. She did not obtain and record in the incident report any information from the education record of either student involved in the fight. Therefore, releasing the incident report to the sheriff's department would likely fall under the "law enforcement unit exception" to obtaining prior parental consent rule and would be legal.

## USE THE STATE JUVENILE JUSTICE EXCEPTION

If such a law exists in this state, the guidance counselor may release the education records to the court intake officer. The intake officer then needs to provide the counselor with written verification that he will not re-disclose the information without parental consent.