



Probation Office Records Request

Question:

The Probation Office has requested a student's grades, disciplinary actions, and attendance for court. Do we send this information to them? Do we need a written, formal request from them?

Answer:

It is important to establish a good working relationship with juvenile probation as they can be a great help when dealing with student issues. Unfortunately, federal law puts a few roadblocks in the way of simply producing the documentation requested by your local probation department. In order to prevent problems and this very situation from re-occurring in the future, it is suggested that the District get a process in place to formalize steps for a cooperative working relationship. One of the steps you could develop in this process would be addressing your exact issue.

Under the Family Educational Rights and Privacy Act (FERPA), in most circumstances law enforcement agencies must obtain a court order or a subpoena in order for a school to release a student's educational records and schools must inform parents (or the adult/emancipated student) before releasing subpoenaed education records. When a release of records of this nature is made, this release must be documented in the educational records log.

Applying this standard law to your question, the Probation Officer needs to provide the District either with a subpoena for each of the students for whom they are seeking records or with a copy of a court order relating to each of the individual students which permits a release of educational records. In the situation of a juvenile on probation, it is quite possible that the court's order placing the student onto a period of probation will cover this type of a request and release. If it does not, you are going to need the subpoena prior to releasing the records.

Whether or not the Probation Officer provides the District with a copy of a court order or a subpoena, the Family Educational Rights and Privacy Act (FERPA) requires the school to notify the parents (or the emancipated/adult student) of the request. The general purpose of this notice is to allow the parents or student time to object to the request to the District. For the District to provide the family with notice of the records request, we would recommend preparation of a written letter advising of the request, The FERPA legalities, and stating the legal basis – subpoena or court order. In this letter the District should advise the family of the date that the records are going to be provided to the Probation Department and tell the family that if they are going to file any court objection, they need to notify the District of this intention prior to the date of release stated in the letter. If an objection is filed, the District can then always choose to file the records (under seal) with the Court with whom the objection was filed and let the Court address the final decision on disclosure.

Federal law also requires the District to log these types of requests and productions into the student's educational records log. This log should be a part of the typical student file. In advising you to take this step, we do recognize that many Districts do not typically have such a log for their student files. If this is the case, one is going to need to be developed for these students.

We have made repeated references to FERPA and "educational records". The term "educational records" as it applies to FERPA is a term of legal art. Under this provision of federal law, educational records include a broad range of information about a student that the District collects and maintains. Such records would include such basic matters as date and place of birth, parents, residences and contact information to matters more directly related to the school and the student's education including, but not necessarily limited to: grades, test scores, courses, activities, special education records, disciplinary records, attendance, awards, etc. In your specific inquiry, grades, disciplinary actions and attendance clearly fall within the definition of an educational record and fall squarely in the parameters of the FERPA law.

Last, as noted above, FERPA requires this process in "most circumstances" when addressing law enforcement requests. There is, as you might expect, an exception or two. The main exception is pursuant to the USA Patriot Act. Under the Patriot Act, FERPA was amended to permit school districts to disclose, without the consent or knowledge of the parent or student, "personally identifiable information from the student's educational records to the Attorney General of the United States or his designee in response to an ex parte order in connection with the investigation or prosecution of terrorist crimes" specified in provisions of the U. S. Code. In such a situation, a District is also not required to log this information in a student's educational log. In this unique situation the Federal Government has also created immunity for the District for complying with the subpoena. There is also a limited situation in the instance of a Federal Grand Jury Subpoena for student's educational records where a school district is not permitted to provide notice or recordation in the student log, only if the Federal Subpoena advises the District of these specific prohibitions.

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