



FAQs about the Educator & SRO Relationship

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This section is designed to provide responses to frequently asked questions (FAQs) that are basic to understanding the legal nature of the relationship that develops when educators and law enforcement collaborate. It is intended to supplement a formal discussion by state and local policymakers regarding the types of interagency plans they wish to consider between educators and law enforcement.

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✓ SUMMARY OF FREQUENTLY ASKED QUESTIONS

Most forms of interagency cooperation at schools are designed to provide an additional resource for educators seeking to maintain a safe learning environment. The case law on school/law enforcement partnerships is not as fully developed as the law regarding the scope of authority of each agency working alone. As a result, there are at least two schools of thought regarding what the law permits and what the law requires of each agency.

The first school of thought is that the rules governing law enforcement should also apply to the school/law enforcement collaboration. The body of law regarding the conduct of police is enormous and rather precise. The law covers a full range of police conduct, from the manner in which investigations are conducted, to how custodial stops should proceed and when searches are initiated, to the circumstances under which persons are subject to arrest. The limitations on police conduct usually reflect official policies designed to avoid violating the rights of citizens. The actions of police officers are generally restricted by the probable cause requirement of the Fourth Amendment. Police are typically well trained regarding the factual circumstances that give rise to probable cause as well as to its exceptions.

Compared to the legal guidelines that apply to the educator, the law enforcement standard is significantly more restrictive. Despite this, state and local policymakers sometimes prefer to apply the more restrictive standard to school/law enforcement activities. Using the restrictive standard shortens the training period for officers assigned to campus, relying upon their previous training about proper police conduct in their new assignment. This standard may also be preferred as a way of proceeding cautiously into collaboration with educators, hoping to minimize both controversy in the community and liability in the courts.

A second school of thought is quickly becoming more popular than the first. It applies the ordinary rules from education law to the school/law enforcement team. This body of law is less known to law enforcement and members of other local agencies. However, it is just as fully developed and provides guidelines for conduct when dealing with juveniles. This law is organized around the theme of the educators' authority to preserve a safe and effective learning environment in light of the education mission. It is significantly more proactive and offers a wider array of responses to the variety of situations that may arise in schools than does the law enforcement standard.

In other words, the scope of authority under the education law model is more permissive than that of law enforcement. Educators are allowed to respond to student conduct that interferes with the education mission and activities. In addition to educators' power to **respond**, recent court decisions suggest that educators can **proactively** discourage undesirable conduct of all kinds — not only that which is overtly disruptive but also that which is deemed inconsistent with the education mission and the campus rules. The primary requirement for educators is for them to respond to juveniles in a manner that is consistent with their legitimate concerns. The “reasonable in inception and reasonable in scope” requirement imposed by the Supreme Court in 1985 is designed to encourage the educator to constantly assess the nature of the fit between campus rules and the reality of the campus environment.

The broad authority of educators is tempered somewhat by two requirements. Educators are required to inform students of the rules and standards of conduct prior to enforcement, and they must provide students with notice and the opportunity to be heard when discipline is meted out.

Providing due process while also exercising the authority to control campus life clearly allows educators to operate from a position of strength when working with students.

When state and local jurisdictions set out to organize a school/law enforcement partnership, the educational rules are immediately attractive. Law enforcement is often eager (despite the need for additional training) to determine how many of the rules governing educational conduct can be made applicable to officers assigned to local campuses. Educators also prefer staying with the rules of their trade for a variety of reasons. First, responsibility for the campus climate remains primarily on the educator and using a set of rules unsuited for that task (probable cause) seems counterproductive. Second, the application of law enforcement rules frustrate many educators in their desire to work directly with juveniles in need of intervention. In such cases, educators desire the flexibility to use other methods of intervention that do not involve official proceedings and documentation. These methods include the curriculum, extracurricular programs, and school-sponsored events as well as staff-to-student counseling and intervention, and peer-to-peer counseling.

The question-and-answer narrative that follows presents the current state of the law concerning school/law enforcement collaboration. The following summarizes the rules that each jurisdiction should review and consider as they enter into a memorandum of understanding on the duties and responsibilities of each agency:

- Educators do not generally become agents of law enforcement when collaborating for the purpose of maintaining a safe campus. Educators may choose to be so, but the rules of school/law enforcement collaboration do not require it.
- The probable cause standard does not generally apply to the activity of educators on campus. Courts will determine the reasonableness of campus rules on a case-by-case basis. However, a preference is clearly emerging — that is, to allow educators to act based on their suspicions that an intervention for a student or group of students is necessary. This lower standard will permit a wider range of inquiry and involvement with students when an educator seeks assurance that the environment on his or her campus is safe and drug-free.
- Law enforcement officers (SROs) assigned to school campuses may become agents and resources to the educator. While some law enforcement officers may choose not to assume this role, the rules of school/law enforcement collaboration allow educators to initiate and direct the manner in which SROs provide assistance. This, in effect, allows the SRO to assume two roles— that of the peace officer when probable cause is established (and when crises occur) and that of a resource to the educator to assist in maintaining a safe and effective learning environment.
- The rules of law enforcement will apply to the activities of the school/law enforcement partnership when the educator is following the lead of the SRO (or peace officer) in determining the policies and procedures that will apply to a juvenile on campus. The law does not permit the SRO to sidestep constitutional law by pretending to enforce the school code of conduct and other educational guidelines while in reality performing ordinary law enforcement activities.
- State and local law (statutes and court decisions) will clarify the nature of the school/law enforcement relationship and should be consulted frequently.

✓ THE LEGAL STANDARDS***WHAT IS THE LEGAL STANDARD THAT GOVERNS THE ACTION OF LAW ENFORCEMENT OFFICIALS ON CAMPUS?***

Peace officers remain peace officers whether they are assigned to a school as a SRO or make frequent contact with a school on their daily beat. The collaboration with an educator does not diminish the responsibilities and duties of a peace officer. As a result, activities that are identical to law enforcement duties performed by peace officers at other locations but happen to involve persons who are on campus and are prompted by events that take place on the campus will trigger the primary law enforcement duty.

The SRO might respond to a crisis situation on campus that requires the expertise of law enforcement, for example, restoring the peace, conducting an investigation, and determining if crimes have been committed. In this context, it makes no difference whether the SRO is responding to a call from the site administrator, the school district office or a 911 dispatcher. The essence of the “routine response” is that it is fundamental to the purpose of law enforcement. The ordinary rules will apply to the way investigations are conducted, how suspects are stopped and detained, when searches are initiated, and when persons are subject to arrest. The fact that a school is the forum for the police activity does not affect the nature of the work that must be done.

The legal standards that apply to campus work of this sort are the probable cause standard of the Fourth Amendment and the protection against self-incrimination standard of the Fifth Amendment. As a result, courts have uniformly held that acts initiated and led by law enforcement officials on campus trigger most, if not all, of the same protections given other citizens who are the subject of a police investigation.

A good example of this approach is found in the so-called “police questioning” or “interrogation” cases. In these cases, law enforcement officials appear on campus to pursue an investigation, or the SRO requests that a student be brought in for questioning. Most courts use a total-circumstances approach to determine whether the encounter between the SRO or other police official and the student constitutes “custody,” which triggers constitutional protections. The elements of the case examined by the courts illustrate the strict approach applied to police-initiated and police-led activity on campus:

- juvenile’s age and experience
- juvenile’s background and intelligence
- capacity of juvenile to understand the implication of waiving rights
- juvenile’s experience with police
- opportunity for juvenile to have access to a parent or other supportive adult.

Ordinarily, a police-led inquiry does not receive benefit of the lower standard that applies to educators, even when the educators summon the student and remain present while the questioning takes place. Since a student would be subject to school disciplinary measures if he/she does not come to the office when told to do so, most courts will find that custody is created by the encounter. In most cases, the courts will find that a custodial relationship exists unless the student is told that he/she is not under arrest, can leave at any time, and does not have to answer any of the officer’s questions. In fact, the likelihood of these warnings lowering the legal standard becomes remote as the age of the student decreases.

Therefore, there is good reason for SROs and other law enforcement officials to be aware of the roles they assume when assisting educators on campus. It will not always be easy to determine which role is appropriate, but it will be essential for the SRO to know when to lead and when to follow the educator.

The memorandum of understanding between law enforcement and schools should give some attention to the proper roles of all parties to avoid confusion and the appearance of arbitrariness in the partnership.

WHAT IS THE LEGAL STANDARD THAT GOVERNS THE ACTIONS OF EDUCATORS ON CAMPUS?

In *New Jersey v. T.L.O.*, (1985), the United States Supreme Court decided that school officials' special need for flexibility and swiftness in responding to discipline problems made the warrant and probable cause requirements for searches inappropriate for school officials in the school setting. The Supreme Court determined that the "strict adherence to the requirement that searches be based on probable cause would undercut 'the substantial need of teachers and administrators for freedom to maintain order in the schools.'"

The Justices were unwilling to give educators a total exemption from the search and seizure requirements, as did previous rulings in some of the state courts. But the Supreme Court gave educators a partial exemption from the need to obtain a warrant based upon probable cause. The Court acknowledged that preserving an appropriate educational climate was an important, delicate, and highly discretionary function. Justice Byron R. White contended that the interests of educators in maintaining discipline at school would be furthered by a less restrictive rule of law that would encourage school officials to maintain a balance between schoolchildren's legitimate expectations of privacy and the school's equally legitimate need to maintain an environment in which learning could take place.

This part of the *TLO* rule has two components. The warrant requirement of the Fourth Amendment is replaced with the requirement that the youths subject to school discipline be under the authority of school officials. Its purpose is to limit the power of school officials' to the acts of student violators. This change also emphasizes the limited nature of new rules; school officials cannot assume authority over persons and things not part of the campus environment.

The Court also determined that searches on school campuses only have to be supported by reasonable suspicion and not by probable cause. The legality of a search of a student, opined the Court, should depend simply on the reasonableness, under all the circumstances, of the search:

Determining the reasonableness of any search involves a determination of whether the search was justified at its inception and whether, as conducted, it was reasonably related in scope to the circumstances that justified the interference in the first place. Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.

The *TLO* decision thus confirms many of the notions that school administrators had always held: The law permits educators to respond to campus safety problems as the need dictates, provided the actions are reasonable. In addition, the decision acknowledged the need for school

officials to react in a timely fashion to misconduct and authorized a shorter response time than would be applicable to ordinary law enforcement.

After *TLO*, the evolution of the authority of educators has been incredible. Their authority has expanded to allow the exercise of discretion not just in response to campus disruptions but also in implementing proactive measures to prevent misconduct from occurring. The code of conduct is, for the educator, a separate disciplinary device and can be implemented with the goal of maintaining a safe and effective learning environment.

WHAT IS THE LEGAL STANDARD THAT GOVERNS THE ACTION OF EDUCATORS AND SROS WHEN THEY COLLABORATE?

Courts have described the standard that applies to schools/law enforcement collaboration as one that diminishes Fourth Amendment and Fifth Amendment requirements when the educator initiates and leads the participation of the police officer:

The special relationship between teacher and student also distinguishes the setting within which school children operate. Law enforcement officers function as adversaries of criminal suspects. These officers have the responsibility to investigate criminal activity, to locate and arrest those who violate our laws and facilitate the charging and bringing of such persons to trial. Rarely does this type of adversarial relationship exist between school authorities and pupils. Instead there is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is one of personal responsibility for the student's welfare as well as for his education.

A police investigation that includes the search of a public school student, when the search is initiated by and conducted by police, usually lacks the "commonality of interests" that exists between teachers and students. **But when school officials, who are responsible for the welfare and education of all of the students on campus, initiate an investigation and conduct it on school grounds in conjunction with police, the school has brought the police into the school-student relationship.**

State of Wisconsin v. Angelia D.B., 211 Wis. 2d 140, 155; 564 N.W.2d 682 (1997). (Citations in the original quote to *T.L.O.*, 469 U.S. at 349 (Powell, J., concurring) have been omitted).

The discussions and analysis by the courts appear to fall into four categories. First, the *TLO* standard has been applied in cases in which a school official initiates the search or in which the police involvement is minimal.

Second, the "reasonable under the circumstances" standard established in *TLO* also has been applied where a school resource officer, on his or her own initiative and authority, searches a student during school hours on school grounds, in furtherance of the school's education-related goals and in keeping with authority granted by the educator.

Third, courts have applied the more forgiving reasonableness standard when educators request the assistance of law enforcement in a search that is otherwise controlled and led by the educator.

Fourth, some courts have not allowed the reasonableness standard and have held that probable cause applies in cases in which "outside" police officers initiate a student search as part of their

own investigation, or in which school officials act at the behest of “outside” police officers.

Under proper school-initiated, school-led collaboration, the educator may ask the SRO to:

- perform an act;
- be present as a witness when the educator acts;
- generally lend support and provide assistance in maintaining a proper learning environment.

WHAT RULES GOVERN RESPONSES TO THE MISCONDUCT OF SPECIAL EDUCATION STUDENTS?

Implementing policies to student misconduct becomes more complicated when the student is receiving special education services. The laws that govern the treatment of special education students create special duties and unique responsibilities. Often this law can create problems for interagency collaboration if the rules are not fully understood. The following brief summary of the law will help remind educators and introduce SROs to the different set of options for special education students that should be considered in their collaborative efforts.

While each state has provisions governing the rights of special education students, these rules are based upon federal laws. Most significant is the Individuals with Disabilities Education Act, (IDEA) and its accompanying regulations. This law brings together rules that began under the Education for All Handicapped Children Act of 1975 later changing to IDEA in 1990. Of additional relevance are the provisions of § 504 of Rehabilitation Act of 1974. Together these laws provide a framework for providing special education resources to meet the needs of emotionally and physically disabled children.

Generally, special education rules require that educators design resources to meet the unique needs of the special education student. The phrase used to characterize this climate is a “free appropriate public education.” An education is deemed “appropriate” if it offers a child the opportunity to achieve his/her full potential commensurate with opportunities provided to other children, disabled and nondisabled. The individualized education program (IEP) must also be structured to give the student a reasonable chance to acquire skills needed to function outside the institution. Programs should be designed individually to the particular needs of the disabled child and should include related support services that enable the disabled child to benefit from the special program provided.

More specifically, educators must educate students with disabilities in the least restrictive environment (LRE). LRE refers to the legal principle that students with disabilities should be educated as close as possible to the regular education environment. Most educators, in response to this notion, attempt to “mainstream” special education students. “Mainstreaming” refers to the practice of placing students with disabilities in regular education classes with appropriate instructional support whenever appropriate. Mainstreaming is one means of meeting the LRE requirement, but IDEA does not require mainstreaming. It only requires that each student be educated in the environment that is the least restrictive for that student.

Four factors must be considered when determining the least restrictive environment. They are:

- 1) the educational benefits of placement in a regular classroom;
- 2) the nonacademic benefits of such placement;
- 3) the effect the student would have on the teacher and other students in the class; and
- 4) the costs of mainstreaming.

Removal from regular education should occur only when absolutely necessary. An educator is justified in making such a decision if the result of including the student with disabilities in regular education is detrimental to the education of other students, or when there is conclusive evidence that an inclusionary placement will not be successful. For the educator, even when a lawful decision is made to separate a disruptive special education student from regular classes, some level of appropriate instructional support may be required.

Misconduct that is Reported and Punished through the Juvenile Justice System

When a special education student commits an act that is disruptive, this act may violate both the school's code of conduct and state law. A range of acts (assaults, threats, thefts, truancy, smoking, possession and/or use of drugs, etc.) raises the option of addressing the behavior through either the IEP or the juvenile justice system or both.

If the misconduct is reported to law enforcement (or to another agency), the provisions of IDEA will not apply:

“Nothing [in IDEA] shall ... prohibit an agency from **reporting a crime** committed by a child with a disability ... or prohibit ... **law enforcement or [courts] from exercising their responsibilities...**” 20 USC § 1415(k)(9)(A)

This “interagency exception” is based on the fact that IDEA and its correlative provisions apply to educators who accept federal educational funding conditioned upon compliance with its rules. Other local agencies that share a common interest with educators in providing needed services to children and their families are not governed by this law.

For more detail on specific special education issues, see:

“What services must federally assisted schools provide for handicapped children under Education of the Handicapped Act” (20 USCS §§ 1401 et seq.). 63 ALR Fed 856.

“Requisite conditions and appropriate factors affecting educational placement of handicapped children.” 23 ALR4th 740.

Terry Jean Seligmann, “Not as Simple as ABC: Disciplining Children with Disabilities Under the 1997 IDEA Amendments,” 42 Ariz. L. Rev. 77 (2000)

WHAT ARE THE STANDARDS FOR SHARING INFORMATION BETWEEN EDUCATORS AND SROS?

The Family Educational Rights and Privacy Act (FERPA), is the primary law that governs the privacy of educational records. The focus of FERPA, also known as the Buckley Amendment, is the protection of the privacy interests of students through standards for record keeping designed to discourage abusive and unwarranted disclosure. Under FERPA, the Department of Education has promulgated rules that govern privacy rights with respect to education records. Failure to comply with FERPA could result in the loss of federal education funding. The reach of FERPA is broad, covering practically every public primary and secondary school as well as public and private universities and colleges.

FERPA was enacted to further the dual goals of providing parents access to education records and limiting nonconsensual disclosure. Its sponsors announced that

[t]he purpose of the Act is twofold - to assure parents of students and students them-

selves, if they are over the age of 18 or attending an institution of post secondary education, access to their education records and to protect such individuals rights to privacy by limiting the transferability of their records without their consent.

FERPA is a "hard copy law," focusing on the ways in which information contained in the education record file is used. As a matter of law, FERPA does not apply to oral communication between educators and others concerning information or knowledge that does not rely on the education record.

FERPA attempts to eliminate the abuse of student records by creating a minimum standard for educational record management. School districts are required to have a written policy that discloses its record keeping practices. This policy must be disclosed periodically to students and parents.

FERPA was never intended to cut off communication between educators and government agencies. FERPA is intended to protect the privacy interests of students against abusive and unnecessary disclosure. Both the enabling legislation and the Department of Education regulations address in great detail the concept of "disclosure." In certain circumstances, FERPA permits two-way communication between schools and other agencies with which they share a common interest.

Aside from the mechanical guidelines placed on educators, FERPA limits the ways in which the information contained in the educational record file can be used. Categories of information are created in order to distinguish sensitive and potentially damaging information from that which is benign.

KEYS TO PROPER DISCLOSURE UNDER THE PROVISIONS OF FERPA

- √ **Is the information considered to be an "education record"?**
- √ **Who is talking and who is listening?**
- √ **What type of information is disclosed?**
- √ **Has the parent consented?**
- √ **Are there special circumstances?**

√ **Is the information considered to be an "education record"?**

The focus of FERPA is on the "education record." The education record is defined as "those records, files, documents, and other materials that contain information directly related to a student; and are maintained by an education agency or institution or by a person acting for such an agency." Generally, most written information schools maintain regarding students (in any form, including computerized databases) will be considered an education record. Nevertheless, written information that pertains directly to a student that is not maintained by the school or by an agent of the school is not an education record. If the information is not an education record, FERPA does not apply.

For example, an important distinction for educators that wish to exchange information about

violent juveniles with the juvenile justice system is the FERPA exception for school law enforcement unit records. These are records kept by a "law enforcement unit of the education agency or institution that is created by that law enforcement unit for the purpose of law enforcement." These law enforcement unit records are not considered education records and may be disclosed to other agencies by the school's law enforcement unit without prior consent of the parents.

Under this exception to FERPA, law enforcement unit means "any individual, office, department or division" that is authorized to enforce the law or to refer violations to appropriate authorities. Law enforcement concerns the violation of criminal laws and does not include disciplinary action taken under the school code of conduct. However, the unit may also perform "other non-law enforcement functions" for the school without losing its exemption. These other functions may include "investigation of incidents of conduct that might lead to disciplinary action" against a student under the school code of conduct. Obviously when internal school discipline does not implicate a violation of federal, state or local law, records of disciplinary action are considered education records and cannot be disclosed without prior consent.

√ **Who is talking and who is listening?**

Schools are not prohibited by FERPA from receiving information pertaining to any child. It is a common misconception that FERPA cuts educators out of the juvenile justice and juvenile child care networks to preserve the privacy of students. Schools are entitled to receive any information another agency cares to share with them unless state law prohibits the disclosure. Therefore, even when doubts exist as to which exception under FERPA will support the sharing of education record information, schools may benefit from being on the receiving end of information about juvenile offenders and their terms of court-supervised probation as well as at-risk juveniles receiving services from other local agencies.

√ **What type of information is disclosed?**

FERPA, like most state laws on juvenile records, is a hard copy law, focusing on the manner in which information contained in the education record file can be used. In an early attempt to clarify the intent of FERPA law on this point, Senator Pell (one of the two sponsors of FERPA) acknowledged that "it could be said that the act's purposes are best achieved when fewer records are kept and used." Senator Buckley (also a cosponsor) further explained that the amendment is intended to require education agencies to conform to fair record keeping practices.

Within the education record, FERPA treats some categories of information differently from others, in effect creating a two-track scheme for record disclosure.

"Directory information" from the education record may be disclosed without prior parental consent after a school gives notice of its intention to do so. A critical distinction exists between "directory information" and all other information present in the file. School districts are permitted to choose how much benign or directory information from the education record it will disclose. Directory information includes but is not limited to the following:

- student name
- address and telephone
- date, place of birth
- major field of study

- official activities
- dates of attendance
- height and weight for sports
- degrees and awards received
- most recent education institution

The items of directory information are made up of information not generally considered by the Department of Education to be harmful or an invasion of privacy if disclosed. In most instances, disclosure is helpful to both the institution and the student. Even so, school districts must establish a policy and give notice as to the type of directory information it intends to disclose. Parents who wish to retain the right to consent to disclosures of directory information must so advise the school.

√ **Has the parent consented?**

Education records not considered directory information generally cannot be released without consent unless the exceptions contained in the rules apply. FERPA gives parents important rights of access and control over the education record and its contents. School districts are required to have a written policy that sets forth how it complies with FERPA. Parents' rights under FERPA must be announced annually and provided to parents on request. Parents must be given access to the contents of the education record file. The access must be meaningful—schools must make location and access an easy matter by spelling out where records are kept. Parents are permitted to challenge the veracity of the contents of information contained in the file. A log chronicling the disclosures of the education record file and its contents must be kept.

√ **Are there special circumstances?**

FERPA provides several exceptions to its prior parental consent requirement. These exceptions clearly convey the intent of Congress that educators be allowed to exchange information with other agencies on a timely basis as specific needs arise.

Records Exchange with other Educators

FERPA authorizes schools to disclose education record information concerning disciplinary action taken against a student to teachers and school officials, including teachers and school officials in other schools, who have legitimate educational interests in the behavior of the student. From the beginning, this type of exchange has been deemed by the Department of Education to be acceptable under FERPA, but the myth that it was not acceptable soon overtook legislative intent. The result of this misconception often placed educators within the same campus at odds over who could see the education record of a student. The transfer of records to other school districts was hardly considered. The 1994 amendments specifically clarify this matter leaving educators free to decide where, when, and to whom record information concerning student conduct should be sent. This clarification is particularly timely for the school-aged offender who crosses state lines. Now under FERPA, this juvenile can no longer assume that the record of their campus crimes will not follow them.

Court Orders

Nonconsensual disclosures that take place pursuant to judicial process, through either a court order or a lawfully issued subpoena, are exempt provided an attempt is made to notify the parent prior to disclosure. This court order might take on several forms. Most will be shaped by

the type of authority possessed by the court in the jurisdiction. The court order may be incident-driven — as each juvenile case is decided, an appropriate order is made a part of the record and sent to the school where the juvenile is enrolled. The court order may also be more generic—essentially authorizing local educators to exchange information with other agencies.

The relationship between FERPA and court orders is important because court orders also satisfy the laws in those states that limit the disclosure of juvenile record information kept by courts and law enforcement agencies. The court order, therefore, serves to support exchanges of information by both agencies, each of which has a different snapshot of the juvenile's conduct with the same need for a complete picture.

Crisis Response

Disclosures of education record information in response to an emergency is exempt from the consent requirement. The emergency exception is in some ways the most obscure of the exemptions contained in the recent series of FERPA amendments. The concept of "emergency" is strictly construed to those events in which it is necessary for the educator to "protect the health or safety of the student or other persons." The fear that this provision would provide incentive for abusive disclosure has never been realized. To the contrary, most educators have failed to acknowledge the fact that most events of serious and violent crime on campus satisfy this exception to FERPA. Qualified under this exception are incidents involving weapons, guns, drugs, and gangs as well as those involving the health of a student who may by his mere presence place others at risk.

Authorization by State Law

The most sweeping amendment to FERPA involves state record-sharing laws. State and local legislators may now authorize the sharing of information. Schools may rely on these laws to release information on students to other agencies. FERPA only requires that:

- the allowed reporting or disclosure concerns the juvenile justice system and such system's ability to effectively serve, prior to adjudication, the student whose records are released; and
- the officials and authorities to whom such information is disclosed certify in writing to the educational agency or institution that the information will not be disclosed to any other party except as provided under state law without the prior written consent of the parent of the student.

After states have authorized information sharing, FERPA requires that schools:

- maintain a record, kept with the education records of each student, which will indicate all individuals, agencies, or organizations that have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information; and
- any agency that violates the disclosure limitations shall be prohibited from obtaining access to information from education records for a period of not less than five years.

In effect, this exception permits states to waive the FERPA privacy provisions to encourage interagency collaboration regarding juveniles. Several states have juvenile records polices that require and authorize sharing of juvenile record information between agencies in the state.

IN COMPLIANCE WITH FERPA, EDUCATORS CAN:

- Participate under an interagency agreement with other agencies in their juvenile justice system and receive information from these agencies on juveniles with whom they share a common interest;
- Share information with other agencies verbally that reflects personal knowledge or knowledge obtained from others, PROVIDING the information does not come from the education record.
- Share information with other agencies in their juvenile justice system after obtaining prior consent by the parent or guardian;
- Share information without obtaining prior consent under the following circumstances:
 1. When the disclosure is made in compliance with court orders and lawfully issued subpoenas;
 2. If the educational agency is initiating legal action against the student or the parent (and the educator has made reasonable efforts to give prior notice);
 3. When providing information to other schools that have a legitimate interest in the behavior of the student;
 4. When authorized by state law (providing the agency to whom the records are disclosed certifies in writing that the information will not be disclosed to any other party, except as provided under state law without prior written consent of the parent of the student);
 5. When the records disclosed are law enforcement records kept by a law enforcement records unit of the educational agency or institution for the purposes of law enforcement; or
 6. In connection with an emergency if the disclosure is necessary to protect the health or safety of the student or other individual.