



# OJJDP Office of Juvenile Justice and Delinquency Prevention

Shay Bilchik, Administrator

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## Information Sharing and the Family Educational Rights and Privacy Act

by Ronald Laney

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has long been aware of the need to foster and encourage the sharing of relevant information about juvenile offenders among law enforcement, education, social service, child welfare, and health and mental health service providers.

Confidentiality of juvenile records and impediments to information sharing between child and family service agencies have become a substantial concern to law enforcement, education, social services, and other juvenile justice professionals. In an era of scarce resources and rising juvenile delinquency, it is critical that all agencies serving children and families maximize their ability to share information that enables them to coordinate and provide more effective services. A lack of information sharing results in wasted law enforcement effort, a failure to target appropriate offenders, and fragmentation and duplication of services as service providers must then formulate treatment plans from a limited perspective. Information sharing between service agencies provides a broader perspective and results in more comprehensive assessments for the development of effective service strategies.

### Information Sharing With Schools

Schools are an indispensable partner when agencies within a jurisdiction come together to implement a juvenile justice plan. When juveniles violate the law, the juvenile justice system is likely to place youths back into school as a condition of probation.

Educators should know when—and the circumstances under which—alleged and adjudicated juvenile offenders are returned to campuses. Given this knowledge, educators can provide counseling and assistance to preadjudicated juveniles and contribute their expertise to the efforts of the juvenile justice system to effectively treat adjudicated offenders. Schools can also supply valuable information to juvenile justice agencies. For juveniles who have been adjudicated, schools can help supervising agencies better assess the rehabilitation process by tracking attendance, academic achievement, and in-school behavior. Under the Family Educational Rights and Privacy Act

(FERPA), this information can be provided by court order, with consent, under certain State laws enacted before November 19, 1974, or under the law enforcement record exception.

Enacted in 1974, FERPA protects the privacy interests of students and parents through standards for recordkeeping designed to discourage abusive and unwarranted disclosure of a student's education records. FERPA provides parents access to education records and limits nonconsensual disclosure. Failure of an educational agency or institution to comply with FERPA can result in the loss of Federal funding.

Many State and local educational agencies and institutions have been overly restrictive in their interpretation of FERPA or in their information release policies. Educators frequently decide to err on the side of caution by establishing policies recognizing a generalized right to privacy with regard to all information on students. Unfortunately, both inaccurate interpretations and restrictive FERPA policies pose significant obstacles to meaningful information sharing between agencies.

The Improving America's Schools Act (IASA) of 1994 (Public Law 103-382) amended FERPA to promote active information sharing by educators. IASA permits educators to share information with juvenile justice system personnel on juveniles prior to adjudication pursuant to State statute.

OJJDP's review of the FERPA statute and the current U.S. Department of Education regulation (34 CFR Part 99) indicates that FERPA does not limit or restrict information sharing through interagency information sharing agreements between schools and other agencies with whom they share a common interest, provided the information sharing is consistent with FERPA. FERPA expressly allows educators to:

- Share information with juvenile justice agencies after obtaining prior consent from the juvenile's parent or guardian.
- Share information, without prior parental consent, under each of the following circumstances:
  - When the disclosure is made in compliance with a court order or lawfully issued subpoena.

- If the educational agency is initiating legal action against the student or the student's parent and has made reasonable efforts to give prior notice.
- When information about disciplinary action taken against a student is being provided to other schools that have a significant interest in the behavior of the student.
- If the information is needed by a juvenile justice agency that is providing services to the student, prior to adjudication, as authorized by State law.
- When the record disclosed is a law enforcement record created and maintained by the law enforcement unit of the educational agency or institution.
- When the disclosure is in connection with an emergency and is necessary to protect the health or safety of the student or other individuals.

These rules allow schools—while complying with FERPA—to play a vital role in a community's efforts to identify at-risk and delinquent youth and provide services either prior to a child's becoming involved in serious and violent crime or following adjudication. As more and more jurisdictions seek to improve their juvenile justice systems through information sharing, the emphasis on neighborhood school participation in interagency information sharing agreements will increase. FERPA need not be a barrier to this progress toward proactive information sharing networks. In an ideal information sharing system, schools would provide and receive information and participate in the formulation of comprehensive intervention strategies for their students who are involved with the justice system.

## OJJDP Information Sharing Initiatives

OJJDP's training and technical assistance programs stress the importance of interagency information sharing. The School

Administrators for Effective Police, Prosecution, and Probation Operations Leading to Improved Children and Youth Services Program (SAFE Policy) is a week-long program directed at reducing juvenile violence in our schools. It stresses the importance of interagency agreements for information sharing and coordination of juvenile services. The Chief Executive Course is an intensive 1-day orientation for local executives of public and private agencies that emphasizes information sharing as a method for improving the juvenile justice system. The Serious Habitual Offender Comprehensive Action Program (SHOCAP) is presented as a module in the SAFE Policy and Chief Executive Training programs and is also available in a 40-hour course designed to assist a SHOCAP jurisdiction in developing its own unique interagency information sharing agreement. The course requires the participation of policy level officials from law enforcement, schools, juvenile detention and corrections, prosecution, and social services.

These courses have modules on laws and policies that impact information sharing and on techniques to maximize information sharing. Sample State legislation, consent policies, and judicial orders are also available to course participants.

OJJDP and the Department of Education are developing a guidebook (*FERPA: Schools and Interagency Communication for Delinquency Intervention and Prevention*) for educators and juvenile justice professionals interested in developing interagency information sharing agreements. The guidebook will provide clear guidance for allowable information sharing while maintaining State and local compliance with FERPA.

For more information concerning OJJDP's training and technical assistance programs, please contact Ronald Laney, Director of OJJDP's Missing and Exploited Children's Program, at 202-616-7323.

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