

DEPARTMENT OF EXCEPTIONAL STUDENT EDUCATION

**Referral to and Action by
Law Enforcement and Judicial Authorities**



FAST FACTS # 24 (5/2016)

A challenge facing all school districts is the administration of discipline for students, including students with disabilities. In some instances, students may commit an offense that violates the district's Code of Student Conduct. After careful consideration of available options, these cases may require that actions be taken which may include removal of the student, a change in placement, and on occasion, referral to law enforcement. When a student commits an act that warrants referral to law enforcement and judicial authorities, it may be necessary to disclose information contained in the student's records to the appropriate authorities.

It is important to note that students in school districts are afforded the right to confidentiality of personally identifiable information contained within their student records. This right is provided for under the Family Educational Rights and Privacy Act (FERPA). However, there are circumstances and situations that exist that may require district personnel to provide student records to the appropriate authorities outside of the school district so that appropriate decisions can be made regarding the student, such as during a health or safety emergency. If school personnel refer a child to law enforcement because of a crime committed, the district has an obligation to ensure that records are transmitted in a timely manner to the appropriate authorities, and in conformity to FERPA, which in most instances includes obtaining prior parental consent to do so. The procedure for *Referral to and Action by Law Enforcement and Judicial Authorities* is found at 34 CFR Part 300, Section 535 of the *Federal Register*. It states the following:

- (a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.**
- (b) (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.**
(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

In order to comply with this regulation, school personnel should proceed as follows:

- When a student with a disability commits an offense that is a violation of the Code of Student Conduct, the administrator or designee should assess the situation to determine what actions should be taken.
- If the offense is reported to law enforcement, prior to adjudication, the administrators must take steps to obtain parental consent, unless otherwise exempted by the provisions of FERPA, to provide special education records, such as the most current IEP, psychological report, social and development history, and discipline records to the appropriate authorities.
- When parental consent is exempted under FERPA, parents must be informed that the school district has or will provide this student information to the appropriate authorities for the purpose of assisting the system with making appropriate decisions and serving the student effectively.

NOTE: 34 CFR 300.535 does not authorize school districts to circumvent responsibilities under the IDEA. It merely clarifies that school districts do have the authority to report crimes committed by students with disabilities to the appropriate law enforcement authorities. School districts should continue to evaluate and address students' behavioral challenges, as related to their disability.

Q: Does the district violate the IDEA rights of a student with a disability by reporting commission of a crime at school to law enforcement authorities without providing procedural safeguards?

A: No, IDEA makes it clear that districts may summon law enforcement authorities in response to any criminal activity of IDEA-eligible students. A district does not have to notify parents or otherwise comply with the IDEA'S procedural safeguards prior to reporting a crime according to IDEA regulations at 34 C.F.R. 300.535 (a).

Q: May the district call the police when a student's misconduct is a manifestation of his disability?

A: Yes, provided the district did not summon the police with intent to discriminate on the basis of the student's disability (i.e. reporting crimes committed by students with disabilities and not crimes committed by non disabled students). Calling the police is not considered a disciplinary measure under the IDEA and the district may summon the police without conducting a manifestation determination or otherwise complying with procedural safeguards.

Q: Does the required transmittal of records under IDEA conflict with the non-disclosure rule of FERPA?

A: The IDEA mandates the provision of a student's special education records and discipline records whenever a district reports a student with a disability to the police, to the extent allowable under the Family Educational Rights and Privacy Act (FERPA). FERPA prohibits the disclosure of educational records without parent consent, except under specified exempt situations.

Q: Who are the appropriate authorities to whom school districts must provide educational records in accordance with the IDEA?

A: IDEA directs schools to transmit special education and discipline records to appropriate authorities to whom it reports a crime committed by a student with a disability, the regulations do not specify by title or qualification who an appropriate authority might be. A legal decision stated that "appropriate authorities" are those who can make or order the making of a determination of the student's special education needs.

Q: Under what circumstances may a district provide educational records of a student with a disability to law enforcement without parental consent?

A: School districts may divulge any educational records to anyone, including law enforcement or juvenile justice authorities, in connection with a health or safety emergency or in response to a subpoena or court order.

Q: What defines a student's "special education records" and "discipline records" for the purpose of transmitting records in accordance with IDEA?

A: IDEA does not offer a definition for "special education" or "disciplinary" records. The particular records would vary with the student and the circumstances. Undoubtedly, special education records would include the student's IEP and any behavioral intervention plan. Beyond that, it is not clear. Disciplinary records are records of disciplinary actions or proceedings taken against a student and maintained by the district.

Q: Within what period of time must a school district transmit special education and discipline records of a student with a disability to law enforcement or juvenile authorities?

A: The law is silent on a specific timeline. However, the intent of this regulation is that the provision of records will be in a timely manner, so that the appropriate authorities may properly consider the student's disability in making decisions that will impact that student.