

LEGAL MAILBAG – April 18, 2024



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The “Legal Mailbag Question of the Week” is a regular feature of the CAS Weekly NewsBlast. We invite readers to submit short, law-related questions of practical concern to school administrators. Each week, we will select a question and publish an answer. While these answers cannot be considered formal legal advice, they may be of help to you and your colleagues. We may edit your questions, and we will not identify the authors. Please submit your questions to: legalmailbag@casciac.org.

Dear Legal Mailbag,

Last week one of the students at our middle school wrote an essay in his English class that caused the teacher such concern that she brought it to me as principal. Her concern was legitimate because the student’s essay was very dark, with references to violence and self-harm. While I have my 092 certificate, I am by no means a mental health professional, and after conferring with our Director of Special Services, I sent the essay to the district’s consulting psychiatrist for review.

The consulting psychiatrist promptly responded. She advised us that our concern for the student’s welfare was valid and that we should share the student’s essay with his parents and convey the psychiatrist’s recommendation that the parents take the student to a psychiatrist immediately for assessment.

We did just that, but the parents’ response was quite the surprise. Instead of thanking us for bringing our concerns and the psychiatrist’s recommendation to them, both parents attacked us for sharing the student’s essay with our consulting psychiatrist without obtaining their written permission. They grudgingly agreed to have their child assessed, but they remained strident in their complaint that we violated FERPA by sharing the student’s personal information (including the essay) with an outside consultant without their knowledge or consent.

I have never been accused of violating FERPA before. Will my district protect me if I get sued?

Signed,
Frightened by FERPA

Dear Frightened:

You can relax for three reasons. First, you did not violate FERPA when you shared the student's essay with the district's consulting psychiatrist. Second, if the parents disagree with Legal Mailbag's conclusion here and unwisely bring a claim against you, you are protected by Conn. Gen. Stat. § 10-235. That statute provides that school personnel are indemnified and held harmless (including attorneys' fees) against claims made against them for actions they take within the scope of their job responsibilities unless their actions are wanton, willful or malicious. Third, the United States Supreme Court has ruled that parents or others cannot sue for damages for FERPA violations. *Gonzaga University v. Doe*, 536 U.S. 273 (U.S. 2002). In short, Legal Mailbag's assurances here should help even the most nervous school administrator relax.

As faithful readers (and educators more generally) know, the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (affectionately known as FERPA) provides generally that school officials must keep personally identifiable student information confidential unless the parent (or eligible student, *i.e.*, a student who is 18 or older who accordingly has FERPA rights) provides written consent for the disclosure of that information. However, FERPA provides that school officials may disclose confidential student information without parental consent in numerous situations (for example, when the information is directory information or when the information is subject to a subpoena).

The exception to the requirement for parental consent that applies here is set forth in the federal regulations that implement FERPA. 34 C.F.R. § 99.31(a)(1)(i)(B) provides that a "contractor, **consultant**, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions **may be considered a school official**" (emphasis added) if the consultant is performing a function on behalf of the school district, is under the control of school officials as to the use of such information, and maintains the confidentiality of that information. Such is the case with your district's consulting psychiatrist.

Legal Mailbag notes that some people project blame on others in emotional situations, and the initial reaction of the parents here is understandable at some level. But Legal Mailbag hopes that you can diffuse the situation by explaining that your actions were appropriate under FERPA and by emphasizing that you did what you did out of concern for their child. All involved here will benefit if you and the parents can work together to assure that the student in question receives the mental support he needs.