Education Records of Children in Foster Care

Legal Center for Foster Care and Education
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Why is it important for education and child welfare agencies to collaborate to improve educational outcomes for children in care?

To be successful, children in foster care must overcome numerous educational challenges. Studies[1] demonstrate that students in foster care experience:

- High rates of school mobility when they enter care and when they change living placements,
- Delays in enrollment when school changes occur,
- School suspensions and expulsions at higher rates than their peers not in foster care,
- Lower standardized test scores in reading and math,
- High levels of grade retention and drop-out, and
- Far lower high school and college graduation rates.

These poor school outcomes can be attributed to many factors. Research has shown that abuse and violence can have a negative impact on children's cognitive development and ability to learn. Many children experience a lack of school stability with enrollment delays and the loss of earned credits when they change schools. Students in care are disproportionately placed in restrictive school programs or residential settings. Despite their disproportionate need for special help, including special education, these students are often unidentified or underserved. These problems are compounded by frequent confusion over who has educational decision making authority or the lack of any legally authorized decision maker or advocate.

The good news is that in recent years, federal, state, and local child welfare and education agencies, and state and federal legislatures, have taken important steps to acknowledge and eliminate some of the barriers to educational success for these children. For many years, child welfare agencies have been required to maintain

certain education records in the child's case plan.[2] Congress passed in 2008 the Fostering Connections for Success and Improving Adoptions Act, which requires child welfare agencies to collaborate with schools to ensure that students remain in the same school when entering care or changing living placements, and that the child is enrolled in a new school district with all school records when a school change is in the child's best interest.[3] For child welfare agencies to meet these important obligations, and to ensure the educational success of students in care, it is essential that their staff has ready access to education records.

Why is it important to share educational information among child welfare, education agencies, and the courts?

Student-specific data

Child welfare staff can fulfill their mandates to maintain children's school records and to ensure that children are enrolled with all school records only if they can promptly obtain these records from the children's schools. Child welfare workers need accurate student level information about a child's education history and current needs to make informed placement recommendations to the court. Selecting a placement that is close to the child's current school and provides the proper education supports, including special education if necessary, will improve the child's well-being, increase permanency, and help prepare older youth to transition successfully to adulthood.

With access to current education data, child welfare staff can help the children in their care achieve school success. At the most basic level, child welfare staff can assist the school system to identify the child's education decision maker. Caseworkers can make sure that youth remains in same school or assist with timely enrollment and transfer of credits if a school change is needed. Child welfare staff can review the child's Individualized Education Program or other special education records, or assist in determining whether the child needs a special education evaluation or an accommodations plan for a chronic condition. Caseworkers might identify the need for English as a Second Language supports, remedial help, or other interventions and can work with school staff to address truancy issues. And finally, together with education staff, they can assist with transition planning and identify supports for post-school activities such as higher education.

Access to current child-specific education data is also crucial for judges to do their job effectively. With this information, a judge can make sure that the child is appropriately placed, is maintained in the same school or promptly enrolled in a new school, has a clear education decision maker, and is receiving any needed additional supports.

System-level data

Sharing system-level data (*e.g.* statewide reading scores of all children in foster care, attendance rates for all high school age children in care in a school district, school mobility rates for children in foster care in a county) among child welfare, education, and court systems can improve these systems and can increase accountability among state and local agencies. Reliable statistics can help stakeholders advocate for better laws and policies and increased funding. With access to this type of data, education and child welfare can identify systemic problems and create needed policies and targeted interventions; child welfare, education agencies, and the courts can collaborate more effectively; and the systems can track progress over time.

What kind of system-level data could child welfare and education collect, analyze, and use to benefit children in care? Some examples include information on school attendance/truancy, school mobility, type of school placement, participation in special education, school discipline statistics, school completion rates, transition readiness, and access to and completion rates in postsecondary programs.

Electronic data sharing

When the education records and data are available electronically and in real time, the benefits for the children and for all systems increase exponentially. Florida has made real strides in developing, and encouraging localities to develop, electronic data sharing agreements. Florida Safe Families Network, Florida's child welfare electronic system, is a statewide database of children for whom Florida has or has had legal responsibility. Florida's Department of Children and Families is adding fields to facilitate the upload of educational data from school districts for children in the Network. In a joint announcement to school districts and child welfare staff, Florida's Departments of Children and Families and Education, self-described "partners" in this collaboration, explained:

> *The purpose of the electronic data sharing is to assist DCF and schools with improving educational outcomes for dependent children. To achieve this goal, student educational information is critical to the process of identifying and analyzing areas of need, developing and implementing evidence-based practices, and determining appropriate allocation of resources based on evaluation data. Both agencies have been collaborating to create a compatible methodology for sharing electronic data between DCF (and its contracted providers/CBCs) and individual schools.*[4]

In addition to interagency electronic data sharing, many school districts are moving towards streamlined electronic access to education records for child welfare staff. Increasingly, schools are using Web-based education records systems (e.g. PowerSchool) to allow parents easier access to school records. In many jurisdictions across the country, school districts have readily developed agreements to allow caseworkers or other identified child welfare staff access to records through these programs.

Which education records are the most important to obtain and to maintain?

Important education records include information relevant to grades, reading/math levels, school attendance, enrollment documents, special education, school discipline, and information on the education programs in which the children have been participating. Also crucial is contact information for the education decision maker, or the surrogate parent if the child is in the special education system and has no parent or other legally authorized adult to make special education decisions.

Each jurisdiction needs to think about which education records are most important for child welfare agencies to get to meet the education needs of children in their care. For example, the Michigan Department of Human Services has developed a "Foster Care Education Records Release" that lists different kinds of education records that child welfare workers should routinely request including transcripts, test data, English Language test scores when appropriate, health and immunization records, and documents needed for enrollment. *Access this resource online*.

What is FERPA and what is the Uninterrupted Scholars Act?

The Family Educational Rights and Privacy Act (FERPA) is a federal law that in most cases prohibits schools from disclosing personally identifiable information from a student's education records to a third party unless the parent (or the student at age 18) gives written consent.[5] Education records are records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.[6] In general, schools may disclose personally identifiable information only after obtaining parental (to eligible student) consent and on the condition that the party to whom the information is disclosed will not re-disclose the information to any other party without such consent.[7]

While FERPA is designed to protect students' privacy, it was not written with the unique situation of children in foster care in mind. Therefore, the parental consent requirement has sometimes prevented or delayed child welfare staff from getting timely access to important information on the educational needs and status of children in care.

FERPA has long had a number of important exceptions to the "no disclosure without parental consent" rule, most particularly when a court orders the release of a child's education records. But a new amendment to FERPA, called the Uninterrupted Scholars Act (USA), has greatly expanded and simplified access to these records for child welfare staff. USA became effective on January 14, 2013.

Under USA's new child welfare exception, schools are now permitted to release a child's education records to an agency caseworker or other representative of a state or local child welfare organization or a tribal organization when the agency or organization is "legally responsible…for the care and protection of the student," and has the right to have access a student's case plan.[8] While this definitely includes children placed in out-of-home care by a child welfare agency, states law should be consulted to determine whether some child welfare-involved students living at home may also fall within the coverage of this amendment.

No federal regulations implementing USA have been issued, but the Assistant Secretaries for Children and Families and Elementary and Secondary Education have issued a Joint Letter to Chief State School Officers and Child Welfare Directors announcing the enactment of the USA and urging interagency collaboration.[9] These agencies also conducted a joint webinar to help explain how the law will be interpreted.[10]

To what extent can education records obtained under the new child welfare exception be shared with third parties?

Child welfare agencies can only disclose education records obtained pursuant to the child welfare exception to "an individual or entity engaged in addressing the student's education needs" who is authorized by the child welfare agency to receive the records and consistent with other state confidentiality rules.[11] This would permit child welfare to share a child's education records with a reading specialist whom the agency has asked to evaluate the child. Or, regardless of whether there is an explicit court order, education records and personally identifiable information from those records could be disclosed to the child's foster parent, the guardian ad litem, a Court Appointed Special Advocates volunteer, or another person whose job includes engaging with the school or working to improve the child's education.

Can a school release education records to comply with a court order, and how did USA change this exception?

A school can release education records to any party listed on a court order or subpoena, such as the caretaker, the child's attorney, or a court appointed special advocate.[12] Under USA, schools do not need to give notice to the parents prior to the release of education records under this exception when the parents are already parties to the child welfare case where the order is entered, and thus are already on notice that the school records will be shared.

Is there any child-specific information that schools can release without parental consent?

FERPA permits the disclosure of "directory information" without parental consent after the school gives general notice to all parents of its intent to release directory information.[13] Directory information can include a student's name, address, telephone listing, email, date and place of birth, grade level, dates of attendance, degrees and awards received, and the most recent educational agency attended by the student. Directory information may also include a student ID number or other unique personal identifier, but only if the identifier cannot be used to gain access to education records except in conjunction with a password or other factor known or possessed by the authorized user. It may not include a student's social security number.

Are there other FERPA exceptions that can help child welfare and education systems share student information for statistical purposes?

There are a number of ways that child welfare and education systems can share information consistent with FERPA's requirements. First, it is important to realize that FERPA's parental consent requirement governs only personally identifiable information from students' records. Consent is not required if the student records are "de-identified," or identified by a non-personal identifier that cannot be traced to an individual student. In many cases, statistical information will not be personally identifiable and therefore will not trigger FERPA at all.

Moreover, the FERPA regulations were amended in December 2011 to help systems share data related to all students through two important changes to the "audit and evaluation" and "research" exceptions. Nothing in USA changes the scope of these other exceptions. State and local education entities can release personally identifiable student information to an authorized representative, which can include a child welfare agency, for an "audit or evaluation of Federally-supported education programs." An education program includes an early childhood education or career and technical education program operated by a non-education agency. Education agencies can also disclose personally identifiable student information to organizations (federal, state, and local agencies and independent organizations) conducting studies to develop, validate, or administer predictive tests, administer student aid programs, or improve instruction. *For more details on these changes, see this resource*.

What have states done to implement USA?

In some states, important collaborations have taken place between the state's education and child welfare agencies to systematize the sharing of data and to implement other reforms. The enactment of USA is an

important new tool for and impetus to these efforts, and some states, including Florida, Maryland, Oregon, Pennsylvania, and Michigan, have already taken steps to ensure its smooth implementation. In each of these states, a joint letter was issued to communicate the new opportunities for sharing created by USA to the county and district level, and to ensure that both child welfare and education agencies understood the process for implementation. To learn more about what states can do around implementation, including specific examples from Florida and Pennsylvania, please listen to the webinar hosted on August 7, 2013 available *here*.

As other states begin to develop policies to implement USA, there are certain components that should be included. The policies should at minimum answer these questions for the field:

- To what children does the exception apply?
  (For example: delineate which students fall under this exception, to include at a minimum, all children placed by the child welfare department in care outside their own homes)

- Who can obtain education records?
  (For example: the child's caseworker from the child welfare agency or from a private provider with whom the child welfare agency contracts, the supervisors or managers of such agencies or providers, education liaisons or specialists, and other administrators with access to the child's case plan)

- What documentation is required to obtain records?
  (For example: a written notification on agency letterhead indicating that the agency has legal custody or is otherwise legally responsible for the care and protection of the child, an email from a child welfare agency email address indicating that the agency has legal custody and is legally responsible for the child, or a list of students from the child welfare agency)

- How will child welfare and education agencies collaborate on a local level?
  (For example: through local data sharing agreements that identify the process and timeline for requesting and sharing records)

- Can data be shared electronically?
  If so, can records be shared in real time (*e.g.,* through a parent portal) or how often can the records be shared/updated?

- What are the criteria for re-disclosure to third parties?
  What individuals or entities are identified by child welfare as "engaged in addressing the student's education needs" with whom children's school records can be shared?

See Appendix 1 of this issue brief for a template that states and localities can use as they develop their policies or joint letters. Clearly these policies need to be tailored to the specific needs of each jurisdiction, but all of them will need to address at least these basic questions. Some other documents that states could develop include: a Sample Release form, a Joint Agency Letter, an Interagency Agreement or Protocol, and Model Court Orders. Examples of what other states have created and additional fact sheets on FERPA and USA can be obtained *here*.

Where can I learn more about this topic?

The Legal Center for Foster Care and Education provides training and technical assistance on data and information sharing. The Legal Center provides examples of what has worked in other jurisdictions, assesses legal strategies, and assists in drafting memoranda of understanding that delineate the role of each stakeholder, protect children's and families' privacy rights, and ensure quality and reliability.

The Legal Center has been active in informing child welfare and school staff and other interested persons about the USA and states' efforts to implement this important new law. The Legal Center has conducted two webinars and a third is planned for fall, 2013. The presentations and documents used in these webinars, and copies of the documents referred to in this issue brief, are available *here*.

For training and technical assistance requests, please email ccleducation@americanbar.org. For a manual and tools about information sharing between child welfare and education, please download *Solving the Data Puzzle here*.

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Notes

[1] National Working Group on Foster Care and Education. *Education Is the Lifeline for Youth in Foster Care* (2011).
[2] This includes the name and address of the child's health and education provider, the child's grade level performance, school record (including disciplinary record), and any other relevant education information. 42 U.S.C. § 675(1)(C), (5)(D).
[3] 42 U.S.C. § 675(1)(G)(ii)(ll).
[4] See, *Florida's Collaboration to Implement Release of Student Educational Records Pertaining to FERPA Amendments* (April 9, 2013), http://www.fostercareandeducation.org/portals/0/dmx/2013/08/file_20130802_094543_iXZSl_0.pdf.
[5] 20 U.S.C. § 1233g, 34 C.F.R Part 99.
[6] 34 C.F.R § 99.3(a).
[7] 34 C.F.R. § 99.33(a).
[8] 20 U.S.C. § 1232g(b)(1)(L).
[9] See, *Joint Letter from George Sheldon and Deborah Delisle to Chief State School Officers and Child Welfare Directors* (April 24, 2013), http://www.fostercareandeducation.org/portals/0/dmx/2013/04/file_20130425_105943_UviTk_0.pdf.
[10] June 13, 2013 Joint Webinar at https://edinfoevents.webex.com/ec0606l/eventcenter/recording/recordAction.do?theAction=poprecord&AT=pb&isurlact=true&renewticket=0&recordID=7016732&apiname=lsr.php&rKey=1a0bdd8cab3e2645&needFilter=false&format=short&&SP=EC&rID=7016732&siteurl=edinfoevents&actappname=ec0606l&actname=%2Feventcenter%2Fframe%2Fg.do&rnd=3982539788&entactname=%2FnbrRecordingURL.do&entappname=url0108l.
[11] 20 U.S.C. § 1232g(b)(1)(L).
[12] 20 U.S.C. § 1232g(b)(2)(B).
[13] 20 U.S.C. § 1232g(a)(5)(A).

Appendix 1

STATE EDUCATION AND CHILD WELFARE DEPARTMENTS'
SAMPLE JOINT LETTER ON THE UNINTERRUPTED SCHOLARS ACT

This letter, issued by [**Department of Education]** and [**Department of Child Welfare**] provides guidance on the Uninterrupted Scholars Act, (P.L. 112-278), which was signed into law on January 14, 2013 with an immediate effective date. The Act makes key revisions to the Family Educational Rights and Privacy Act (FERPA) that will make it easier for child welfare agencies to access education records.

The Act specifically authorizes schools and school districts to release a student's education records to "an agency caseworker or other representative of a state or local child welfare agency, or tribal organization" who has the right to access the child's case plan when the agency or organization " is legally responsible" for the "care and protection of the student."

The records obtained pursuant to this exception may not be re-disclosed to any other person or entity unless those individuals or entities are engaged in addressing the student's educational needs and authorized by the child welfare agency or organization to receive such disclosure and such disclosure is consistent with state confidentiality laws. Notably, this new law does not change the ability of child welfare agencies and others to access de-identified or non-student specific education information as long as education records/information cannot be traced to an individual student.

It is the position of both departments that this Act applies to **[delineate which students fall under this exception, to include at a minimum, all children placed by the child welfare department in care outside the child's own home].**

It is also the position of both departments that the individuals who can obtain education records under this exception, specifically those who have the right to access the child's case plan, include the following:

[Insert list of individuals authorized to view the case plan. For example, the list might include:

- **the child's caseworker from the child welfare agency or from a private provider with whom the child welfare agency contracts**
- **the supervisors or managers of such agencies or providers**
- **education liaisons or specialists**
- **other administrators with access to the case plan]**

[Insert list describing proof that the individual is legally responsible. For example, proof might include:

- **a written notification on agency letterhead indicating that the agency has legal custody or is otherwise legally responsible for the care and protection of the child**

- **an email from a child welfare agency email address indicating that the agency has legal custody is legally responsible for the child**
- **release form**
- **[insert other proof acceptable in your jurisdiction]**

When the child welfare agency requests records, no parent signature or court order is needed to process the request. However, child welfare agencies have a continuing obligation to work collaboratively with families and local education agencies to address the educational needs of children in dependent care. As a result, the child welfare agency representative working with the family should explain to the parent and to the school entity that provides the records that while the agency will have access to the education records, unless the court has limited a parent's educational rights or an educational decision-maker has been appointed, the parent still maintains the right to access the records directly from the school and the right to make decisions about the child's education. The child welfare worker and the school should make all efforts to keep parents informed and involved in the child's education.

Because of the variation in systems across school districts, local agencies and community partners **[insert agency and partner details, to include, for example, school districts, local or state child welfare agencies, private child welfare providers, others]** are encouraged to develop or revise local data sharing agreements. Such agreements should delineate specific methods and related procedures to facilitate child welfare access to student educational records (*i.e*. hard copy, web system, parent portal, etc.). However, the absence of such an agreement should not limit the ability of child welfare agencies to obtain prompt access to student records.

To facilitate efficient information sharing, the information may be shared electronically, with appropriate protections in place for student privacy. **[If available, include details about how information can be shared electronically.]** To this end, local agencies and community partners are encouraged to revise local electronic data sharing agreements.

Electronic data sharing can assist **[child welfare department]** and the schools with improving educational outcomes for dependent children. Student educational information is critical to the process of ensuring prompt enrollment, school stability and appropriate placement of children as well as identifying and analyzing areas of need, developing and implementing evidence-based practices, and determining appropriate allocations of resources.

We ask for your continuing assistance and collaboration in addressing the educational needs of children in out-of-home care by adhering to the new provisions of FERPA and allowing for the sharing of education records. Schools should provide records as soon as possible and no later than **[insert number of days]** of a request by the department.

In addition, the Uninterrupted Scholars Act provides that, in cases where a parent is a party to a proceeding involving child abuse, neglect, or dependency, and a court order is issued authorizing the

disclosure of education records, additional notice need not be provided to the parent by the educational agency before educational records are released.

We look forward to working together to improve educational outcomes for these vulnerable students at the state and local level.