

Foster Care & Education

Q&A

THE UNINTERRUPTED SCHOLARS ACT: HOW DO RECENT CHANGES TO FERPA HELP CHILD WELFARE AGENCIES GET ACCESS TO SCHOOL RECORDS?

Q: Why is sharing education information between child welfare, education, and court systems important?

A: Child welfare workers need accurate information about a child's education history and 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. Sharing education records also increases transparency and accountability across different state and local agencies, and reliable data helps stakeholders advocate for better laws and policies as well as increased funding. *Moreover, federal law requires child welfare agencies to maintain education records in each child's case plan file.*

Q: What is FERPA and how does it affect education agencies' ability to share education records with child welfare agencies?

A: Schools must comply with the Family Educational Rights and Privacy Act (FERPA), which protects the privacy of students' education records. "Education records" are all the materials maintained by an education agency or institution containing information

directly related to a student. FERPA explains what information from a student's records can be shared, with whom, and under what circumstances. Generally, FERPA prohibits schools from disclosing a student's education records to a third party unless the parent (or the student at age 18) gives written consent.

However, FERPA contains a number of important exceptions, and a recent amendment to FERPA will now make it much easier for child welfare agencies to obtain children's education records from schools.

Q: What has changed in FERPA that affects children in foster care?

A: The Uninterrupted Scholars Act (USA), known in the House as the A+ Act, passed Congress with bipartisan support. The changes to FERPA became effective on January 14, 2013. The law makes two very important changes to FERPA:

- USA creates a new exception under FERPA that makes it easier for schools to release a child's education records to child welfare agencies without the prior written consent of the parents. (*This does not mean that child welfare agencies should leave out parents. In fact, good practice dictates that child welfare agencies should make efforts to keep parents informed and involved at all times.*)
- USA eliminates the requirement that education agencies notify parents before education records are released pursuant to a court order to any individual, when the parent is a party to the case where that order was issued.

Q: Why were these changes needed?

A: Previously, FERPA had caused delays and problems for child welfare agency representatives in getting critical education records. Children and youth in foster care are among the most educationally at-risk of all student populations. Child welfare law requires that child welfare agencies maintain education records as part of the child's case plan. The Fostering Connections to Success and Increasing Adoptions Act of 2008 now also requires agencies to make sure that children are enrolled in school, that their school placements are as stable as possible, and that children who change schools are promptly enrolled with all school records. To meet these requirements – and to ensure informed and timely judicial decisions – child welfare agencies need quick access to the child's education record.

Q: To whom can schools release records under the new exception?

A: The new amendment permits schools to release 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 a student's case plan, and when the agency or organization is “legally responsible” for the child's “care and protection.” While this will clearly include all children placed in out-of-home care by the agency, states may vary as to which other students fall into this category. Remember, even for children that are not in this category, the child welfare agency may nonetheless be able to get records through other means. Please see Q & A: *How Can Child Welfare Agencies Access Education Records in Compliance with FERPA* for more information:

http://www.fostercareandeducation.org/portals/0/dmx/2012/09/file_20120920_161604_YFhF_0.pdf

Q: When and with whom can the child welfare agency share the education records?

A: While the new exception does facilitate information sharing with child welfare agencies, it still protects the confidentiality of students' records. Child welfare agencies can only redisclose education records obtained through this 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 laws. Of course, the child welfare agency may also share the records with any individual who meets another FERPA exception. Please see Q & A: *How Can Child Welfare Agencies Access Education Records in Compliance with FERPA*:

http://www.fostercareandeducation.org/portals/0/dmx/2012/09/file_20120920_161604_YFhF_0.pdf.

Q: How did the new law change the notice requirements under FERPA's “court order” exception?

A: Another important exception to FERPA's parental consent requirement is when education records are shared with a third party to comply with a judicial order or subpoena. A school can release education records to any party listed on a court order, such as the child welfare agency or caseworker, caretaker, children's attorney, or court appointed special advocate. Under the new law, schools do not need to provide notice to parents prior to the release of records pursuant to the court order exception when the parents are parties to the child welfare case and are already on notice that the school records will be shared.

Q: Where can I learn more about this topic?

A: The Legal Center for Foster Care and Education provides training and technical assistance to states and jurisdictions to improve their data collection and information sharing across agencies. We provide examples of what has worked in other jurisdictions, assess legal strategies, and assist in drafting memoranda of understanding (MOUs) that delineate the role of each stakeholder, protect children's and families' privacy rights, and ensure quality and reliability. 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* at http://www.fostercareandeducation.org/portals/0/dmx/2012/08/file_20120829_141730_VmdKIY_0.pdf. To stay up-to-date on implementation of this important law, please visit the Data and Information Sharing section of the Legal Center for Foster Care and Education website: <http://www.fostercareandeducation.org/AreasofFocus/DataInformationSharing.aspx>