

Frequently Asked Questions: Access to Educational Records for Children in Care

Question:

What laws govern the sharing of information between foster care and education?

Answer:

The Family Education Rights and Privacy Act (FERPA) explains what information may be shared, with whom, under what circumstances.

Question:

Why is sharing information and data between the Department for Children and Families (DCF)/Child Welfare Case Management Providers (CWCMPs), education, and the courts important?

Answer:

It improves systems and helps children. With accurate information about a child's educational needs, the case manager can make better decisions about a child's placement, well-being, and transition goals, and the judge can ensure that children, including those with disabilities and other special needs, get the education and supports they need. Transparency increases accountability among state and local agencies, and reliable data helps stakeholders advocate for better laws and policies and increased funding.

Question:

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

Answer:

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. This could include 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 Litam (GAL), a Court Appointed Special Advocate (CASA) volunteer, or another person whose job includes engaging with the school or working to improve the child's education.

Question:

Where can I learn more about this topic that relates to education for children in care?

Answer:

The Legal Center for Foster Care and Education is available for training and technical assistance on data and information sharing. They provide examples of what has worked in other jurisdictions, assess legal strategies, and assist in drafting memoranda of understanding 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, email cceducation@americanbar.org. For a manual and tools about information sharing between child welfare and education, download Solving the Data Puzzle: A How To Guide Collecting and Sharing Information to Improve Educational Outcomes for Children in Out-of-Home Care at http://www.fostercareandeducation.org/database.aspx?EntryID=1543&command=core_download&method=inline

Question:

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

Answer:

FERPA allows “directory information” to be disclosed without parental consent, after the school gives general notice to all parents of its intent to release directory information. Directory information can include: student’s name, address, telephone listing, data and place of birth, major field of study, participation in activities and sports, weight and height (for athletic teams), 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. Social security numbers are not directory information.

Question:

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

Answer:

Statistical information often will not be personally identifiable and will not trigger FERPA. The FERPA regulations were amended in December 2011 to help systems share data related to all students. Nothing in the Uninterrupted Scholar's Act (USA) amendment changes the scope of this exception. State and local education entities can now 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 (including 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 http://www.fostercareandeducation.org/database.aspx?EntryID=1313&command=core_download&method=inline

Question:

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

Answer:

Yes, a school can release education records to any person listed on a court order, such as DCF or a CWCMP staff member, caretaker, children’s attorney, or court appointed special advocate. Under the 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.

Question:

What is FERPA and what is the Uninterrupted Scholars Act (USA)?

Answer:

Schools must comply with the Family Educational Rights and Privacy Act (FERPA), which protects the privacy of a student's education records. The law 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. Education records are all materials maintained by the educational agency or institution containing information directly related to a student. Information that does not directly relate to a student, as well as information that was obtained from a source other than that students' education records, can be shared without triggering FERPA.

FERPA regulations define a parent as "a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian." In Kansas, this includes the Secretary when DCF has custody. DCF's position is that if parental rights have not been terminated, the parent should first be contacted to sign releases for education records. If parental rights have been terminated the Secretary or designee stands in loco parentis and is able to sign such releases. Policy requires DCF social workers to ask the parents or guardians to sign a "Consent for Release of Information form" (Appendix 5H) whenever a child is placed in out-of-home care. The form explains to whom the education records may be disclosed and that the parents' consent is voluntary.

FERPA has a number of important exceptions to the "no disclosure without consent" rule. The most important for child welfare agencies is a new amendment to FERPA called the Uninterrupted Scholars Act (USA). Under this new "child welfare exception," schools are now permitted to release a child's education records to representatives of state child welfare organizations or tribal organizations when the agency or organization is "legally responsible...for the care and protection of the student" and has the right to access a student's case plan. This includes the CWCMP agencies under contract with the State of Kansas to provide services to children in foster care. For more information about USA, see

http://www.fostercareandeducation.org/database.aspx?EntryID=1833&command=core_download&method=inline

(Adapted from information authored by the American Bar Association Center on Children and the Law, Education Law Center, and Juvenile Law Center) See also www.fostercareandeducation.org