

**THE UNINTERRUPTED SCHOLARS ACT:  
HOW RECENT CHANGES TO FERPA  
CAN IMPROVE EDUCATIONAL  
OUTCOMES FOR CHILDREN IN CARE**

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# FOSTER CARE & EDUCATION

- Collaboration of
  - American Bar Association Center on Children and the Law
  - Annie E. Casey Foundation
  - Casey Family Programs
  - Education Law Center (PA)
  - Juvenile Law Center
- A national technical assistance resource and information clearinghouse on legal and policy matters affecting the education of children and youth in foster care
- Listserv, Training Materials, Conference Calls and Webinars, Publications, Searchable Database (includes state laws & policies)
- Website: [www.fostercareandeducation.org](http://www.fostercareandeducation.org)

# Children in Foster Care: Educational Crisis

- Only one third receive a high school diploma in four years;
- Twice as likely to drop out
  - Philadelphia study: 75.2% dropped out of high school in 2005
- 2-4 times as likely to repeat a grade
  - California study: 83% of children in care in Los Angeles were held back in school by the third grade
- Significantly below their peers on standardized tests
  - Lower reading levels and lower grades in core academic subjects
- While 70% of foster youth want to attend college
  - 7-13% gain access to any higher education programs and
  - only 2% obtain bachelor's degrees.

# Barriers To Educational Success

- Lack of school stability
- Delays in enrollment & transfer of credits
- Disproportionate referrals to inappropriate school settings
- Lack of access to needed services, including special education
- Confusion over educational decision making authority
- Lack of any decision maker or advocate, particularly for children in residential settings.

# Blueprint for Change: Education Success for Children in Foster Care



- **8 Goals** for Youth
- **Benchmarks** for each goal indicating progress toward achieving education success
- National, State, and Local **Examples**

# Goals for Youth

**Goal 1: Remain in the Same School**

**Goal 2: Seamless Transitions Between Schools**

**Goal 3: Young Children Are Ready to Learn**

**Goal 4: Equal Access to the School Experience**

**Goal 5: School Dropout, Truancy, and  
Disciplinary Actions Addressed**

**Goal 6: Involving and Empowering Youth**

**Goal 7: Supportive Adults as Advocates and  
Decisionmakers**

**Goal 8: Obtaining Postsecondary Education**

[http://www.fostercareandeducation.org/AreasofFocus/  
BlueprintforChange.aspx](http://www.fostercareandeducation.org/AreasofFocus/BlueprintforChange.aspx)

# Why Education Records Are Important: Student Level

- Immediate enrollment
- Appropriate grade & classroom placement
- Transfer of credits
- Individualized Education Program (IEP) & 504 Plan
- Records identify need for remedial help, special education evaluation, truancy issues
- Transition planning & higher education



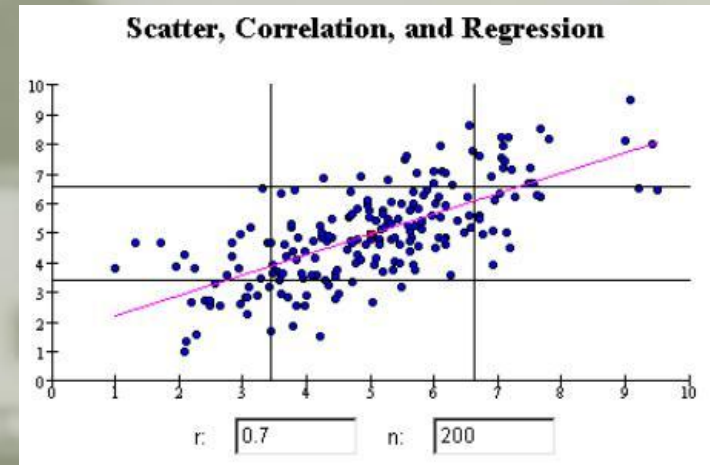
# Why Education Records Are Important: System Level

- Permits immediate access to critical information to improve decision-making by both child welfare & education
- Allows child welfare to be alerted to education issues on a consistent basis (e.g., truancy)
- Supports collaboration between systems to improve outcomes
- Tracks and assesses effective interventions

# Two types of information = Different Rules

## **Statistical** – Aggregate & Disaggregate

- Aggregate = Not “personally” identifiable
- Disaggregate = Children/youth in child welfare



## **Student Level - Individual**

- Personally identifiable
- Individual records - reports, transcript, IEPs, discipline records, medical records & beyond



# Benefits of Sharing Student-Level Data

- Trigger prompt interventions
- Ensure child benefits from legal rights
- Track child over time and across systems
- Improve decision-making by courts & child welfare

# Benefits of Sharing Statistical Data

- Identify systemic problems
- Develop effective policies & priorities
- Target funding (e.g., school stability)
- Facilitate collaboration among multiple systems

# So What's the Problem with Sharing?

## Family Educational Rights and Privacy Act

**Purpose: Protect privacy interests of students' education records**

**Why?** To protect the interests of students by limiting access of records to “expected” use, requiring *prior* notice & *consent* to disclosures while allowing “reasonable” sharing of records.

**Prohibits** schools from disclosing personally identifiable information from students' education records without the written consent of a parent or eligible student unless an exception to general consent rule applies.

20 U.S.C. 1233g; 34 CFR Part 99

# FERPA Definitions

- Education records: BROAD Definition
  - Any 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. See 34 CFR § 99.3
- Parent under FERPA: Natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.
- Eligible Student: Student age 18 or over.

# Student/Parent Rights Under FERPA

- to be informed about all educational records;
- to inspect them;
- to request an amendment to them;
- to challenge the accuracy of the records;
- to consent to the disclosure of records;
- to prevent unauthorized disclosure of the records;
- to complain to DOE about a violation of FERPA; and
- to waive these rights in writing at your discretion

These rights are granted to the parent of a child under 18. At age 18, these rights transfer to the student.

## **FERPA CONSENT IS NOT REQUIRED:**

- **Non-personally identifiable information**
  - **Consent is NOT required if the student records are “de-identified” or identified by non-personal identifier that cannot be traced to an individual student.**
- **NOT student specific (e.g., instruction notes)**



# Exceptions to the FERPA Consent Requirement (15 total) – Examples

- **Directory Information (subject to Opt-out)**
  - name, address, phone, date and place of birth, participation in officially recognized activities and sports, and dates of attendance, etc.
- **Emergency Exception:** Disclosure to “appropriate parties” permitted in connection with “emergency” to protect health and safety of student or other persons;
- **Judicial order or subpoena:** Comply with court order

# Re-disclosure of records prohibited

In general –

- School may disclose personally identifiable information only on the condition that the party to whom the information is disclosed **will not redisclose the information without the prior consent of the parent or eligible student.**

# Why Does Child Welfare Need Access to Education Records for Children in Care?

- Must keep education records as part of written case plan, including:
  - Name and address of health and education provider
  - Grade level performance
  - School record (including disciplinary record)
  - Any other relevant education information
- Fostering Connections: Attendance & school stability

*Title IV-E of the Social Security Act  
42 U.S.C.A. 675(1)(C) & (5)(D)*

# Uninterrupted Scholars Act – **New Law!**

- Effective January 14, 2013, the Uninterrupted Scholars Act (USA) includes two important changes:
  - 1) USA creates a new “child welfare exception”
  - 2) USA eliminates duplicative notice for the “court order exception”

# FERPA – Child Welfare Exception

- Education records CAN be disclosed without consent to:
  - Whom - “an **agency caseworker or other representative** of a State or local child welfare agency, or tribal organization... who has the **right to access a child's case plan**
  - When - such agency or organization is **legally responsible** for the **care and protection** of the child in accordance with state or tribal law.
  - And - the education records, or the personally identifiable information contained in such records of the student will **not be disclosed by the agency or representative... except to an individual or entity engaged in addressing the student's education needs...**

# Other Ways to Access Education Records

**(e.g., CASAs, Child attorneys, etc.):**

- **Parental Consent**
- **Court order**
  - Anyone that a court order indicates may have access to records. Also, under USA no need for education agencies to re-notify parents of that court order (because parent was a party to the case where the order originated).
- **Re-disclosure under USA exception**
  - Permitted to an individual or entity engaged in addressing the student's education needs.

# Federal Guidance

April 24, 2013

Joint Letter from U.S. Department of Health and Human Services and U.S. Department of Education

- “We believe that the Uninterrupted Scholars Act furthers efforts to build interagency collaboration – at the local, state and federal levels – between education and child welfare agencies. We encourage these agencies to share information about students in foster care to ensure the success of these students.”

# Federal Guidance (cont'd)

- “The Department of Education will provide additional technical assistance to further explain the requirements of the FERPA amendments and outline how education and child welfare agencies may share information....”
- Activities include:
  - Joint webinar – June 13,2016 by DOE and HHS
    - <http://ptac.ed.gov/event/webinar-uninterrupted-scholars-act-how-schools-can-share-information-about-foster-children>
  - Presentations at conferences
  - Technical assistance – Privacy Technical Assistance Center
    - <http://ptac.ed.gov/>
- For more information, visit [www.ed.gov/fpco](http://www.ed.gov/fpco).



# Federal Guidance (cont.)

## Best Practices –

- Clarify what documentation is required to access records
- Ensure collaboration and communication between agencies
- Educate staff through cross-systems training
- Facilitate prompt access to records (e.g., weekly downloads)
- While not required to do so, representatives of child welfare should maintain records regarding disclosures of education records

# State Implementation

Please join us for the next webinar!

- **Sample State/Local Memorandum of Understanding**
- **Sample State Guidance Letter**
  - **Which children does the exception apply to?**
  - **Who can obtain education records?**
  - **What documentation is required to obtain records?**

# Information Sharing Under USA

- Improves opportunities and outcomes for individual students by ensuring prompt enrollment, appropriate placement and services, credit transfers etc.
- Expands opportunities to identify systemic problems
- Facilitates stronger collaborations between systems
- Expands opportunities to develop effective policies and targeted interventions
- Permits systems to track progress and interventions over time through longitudinal data

# Look at Your Current Systems

- Look at Data & Information Sharing Across systems
- How can education records be shared across systems?
- Can changes be made to existing systems to support new information sharing?
- Can agencies facilitate immediate sharing of education records? Real-time communications between Education & Child Welfare (e.g., alert on Child Welfare system re absences)
- System Level Sharing – What can we learn?
  - What does Child Welfare collect?
  - What does Education collect?

# KINDERGARTEN PROGRESS REPORT

ST. PAUL'S LUTHERAN SCHOOL  
 201 Elm Street  
 Northville, MI 48167  
 (313) 349-3140

STUDENT'S NAME

TEACHER'S NAME

SCHOOL YEAR 19 7 - 19 88

### EVALUATION KEY

- ✓ - SATISFACTORY
- - IMPROVEMENT NEEDED
- - NO INTEREST SHOWN

# Education Information Child Welfare Could Collect

- Attendance
- School Mobility
- Type of School Placement
- Special Education
- School Discipline
- School Completion Rates
- School Credits
- Transition Readiness
- Access to Postsecondary

READING READINESS	NUMBER DEVELOPMENT	LANGUAGE DEVELOPMENT	PERSONAL	1	2	3	4
Recognizes own name	Understands counting order	Is eager to explore art media	Knows full name				
Recognizes alphabet	Recognizes numbers to 10	Is imaginative with art media	Knows address				
Associates sounds with letters	Recognizes numbers over 10	Identifies colors; shapes; sizes	Knows phone number				
Can blend	Writes numbers clearly		Knows age & birthday				
Sees similarities in words	Uses knowledge of numbers	<b>DEVELOPMENT IN MUSIC</b>		<b>WORK HABITS</b>			
Works from memory	Knows basic shapes	Shows enthusiasm for music	Observes rules & regulations				
Is interested in books/stories	Understands math terms	Enjoys singing	Follows directions promptly				
			Has good attention span				
		<b>SOCIAL DEVELOPMENT</b>		Works neatly			
		Accepts school routine	Completes activities promptly				
		Plays/Works well with others	Works well independently				
		Has made friends in school	Seeks help when needed				
		Shares and takes turns	Uses materials correctly				
		Is courteous	Takes care of materials				
		Is happy	Cleans up after work period				
		Displays self-control	Finishes what has been started				
		Shows self-confidence	Values own work				
		Respects property of others	Is observant				
		Adjusts to new situations	Is curious				

FIRST QUARTER COMMENTS	SECOND QUARTER COMMENTS	THIRD QUARTER COMMENTS	FOURTH QUARTER COMMENTS
Katie likes much	Katie's work habits	Katie has a	I've enjoyed
interest to class	have greatly improved	fantastic imagination	Katie's clever
discusses the work	She's neater, doodles	which is a parent	artistic talent
to be a teacher	less and just	in her art	this year.

# In summary

- USA allows child welfare agencies to access education records immediately
- Child welfare agency is allowed access to education records, but parent maintains education rights under FERPA
- New opportunities for collaboration between child welfare and education and to improve education outcomes for children in care

# Resources on USA and FERPA

- <http://www.fostercareandeducation.org/AreasofFocus/Datainformationsharing.aspx>
- Two Q & A factsheets: one on USA and one on FERPA generally
- Federal joint agency letter supporting information sharing and the new Uninterrupted Scholars Act
- Manual on interagency information-sharing



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### Getting Started?



Are you new to the topic of foster care and education and aren't sure where to begin?

[Start here](#)

Or, use our [searchable database](#) to find resources on a particular topic or state or access [Legal Center publications](#).

### Federal Highlights



Learn about what is happening in the U.S. House of Representatives and Senate, as well as the U.S. Departments of Education and Health and Human Services around foster care and education.

[Start here](#)

### State Highlights



Across the country, child welfare agencies, schools, and courts are working together to improve education outcomes for children in foster care. Learn about state progress, updates, and trends.

[Start here](#)

### Fostering Connections



The Fostering Connections Act is designed to ensure school stability for children in foster care. Learn practical strategies and access tools

### Data & Information Sharing



Collecting, evaluating, and sharing information on the education of children in foster care is essential to improving their educational

### Special Education



Who holds special education decisionmaking rights for children in foster care? We have developed a variety of materials to help


- “Getting Started” page
- Database
- Listserv
- Areas of Focus:
  - Fostering Connections
  - Special Education, Data & Information sharing
  - News & Updates



Database

www.fostercareandeducation.org/Database.aspx

GENERAL ADMIN and BENEFITS LOGINS ABA Intranet LCFCE Master Workpl... LCFCE State Reports CQ5 NRCDFC.ORG: Educati... Pin It BABY RELATED 2012 Discretionary Gr...



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Keyword search:

**OR**

Search by the selecting from the following:

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Topic:

Format:

Audience:

[Clear search](#)

**Search By Goals**



The "Blueprint for Change" is a tool for change. The 8 goals are a framework for both direct case advocacy and system reform efforts. Search by Goal to learn about relevant laws, tools, and publications.

Select a Goal to view all documents associated with that goal. Use the filter records box to narrow your search, or click on the column header to sort by that column.

**Goal 1**  
Decrease School Mobility

**Goal 2**  
Seamless Transitions Between Schools

**Goal 3**  
Early Education and School Readiness

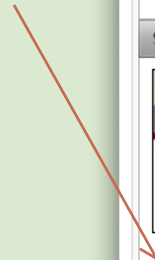
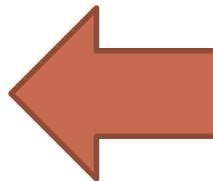
**Goal 4**  
K-12 Participation and

Filter results by keyword:

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Showing 0 to 0 of 0 entries

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# NEXT Webinars

- Presentation on [Models of Effective Implementation of the Uninterrupted Scholars Act](#) - highlighting state guidance and cross-systems collaborations. (Will include Sample Information-sharing MOU and Sample State guidance letter)
- Presentation on [How Access to Education Records Can Improve Educational Outcomes](#) - highlighting models of information sharing and effective interventions.

Join listserv at [www.fostercareandeducation.org](http://www.fostercareandeducation.org) to stay up-to-date!

# How Can We Help You?

- Identifying what information needs to be shared across systems;
  - Understanding how to share information consistent with federal and state confidentiality laws;
  - Developing the necessary tools for information sharing, such as Memoranda of Understanding (MOUs) between child welfare and education.
- For training or technical assistance requests, please contact us! [ccleducation@americanbar.org](mailto:ccleducation@americanbar.org)

# Contact Information

[www.fostercareandeducation.org](http://www.fostercareandeducation.org)

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