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MEMORANDUM

TO: Local School System Superintendents
Directors, Local Departments of Social Services
Assistant Directors, Local Departments of Social Services

FROM: Dr. Lillian M. Lowery, Maryland State Superintendent of Schools
Maryland State Department of Education *fwj*

Theodore Dallas, Secretary *TD*
Maryland Department of Human Resources

DATE: September 27, 2013

SUBJECT: Access to Education Records: Uninterrupted Scholars Act and Changes to Family Educational Rights and Privacy Act (FERPA)

The Maryland State Department of Education and the Maryland Department of Human Resources are issuing this joint statement in a collaborative effort to provide guidance to school systems and Departments of Social Services regarding the Uninterrupted Scholars Act (P.L. 112-278), enacted on January 14, 2013 with an immediate effective date.

Access to Education Records

The Act amends the Family Educational Rights and Privacy Act (FERPA) to provide child welfare agencies easier access to education records. This new exception allows disclosure of an education record to an agency caseworker or other representatives of a State or local child welfare agency, who has the right to access the child's case plan, without obtaining parental consent or a court order. This exception applies to children for whom the child welfare agency has legal responsibility for care and protection, specifically those in out-of-home placement. This includes children placed under voluntary placement agreements and youth co-committed to the Maryland Department of Juvenile Services.

The Uninterrupted Scholars Act does not usurp the rights of parents who continue to be the educational decision maker for their child in out-of-home placement. It merely allows the local department of social services to obtain a student's education records in a more timely and efficient manner. Therefore, the local department of social services 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 otherwise specified, the parent still maintains the right to access the records directly from the school and the right to make decisions regarding the child's education. The caseworker at the local department of social services should continue to make every effort to keep parents informed and involved in the child's education.

The Uninterrupted Scholars Act amends FERPA to eliminate the requirement that local school

systems notify parents before education records are released pursuant to a court order in cases where a parent is a party to a proceeding involving child abuse or neglect, or a dependency matter, in which the court order was issued.

To facilitate efficient information sharing, education records may be shared electronically, with appropriate protections in place for student privacy. Due to the variation in operation systems across local school systems, local agencies and community partners (including private child welfare providers) are encouraged to develop or revise local cooperative agreements (*i.e.* MOUs) to specify methods and related procedures to facilitate access to students' education records (*e.g.*, by 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.

Who Is Allowed Access?

It is the position of both agencies 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:

- The child's case worker from the Local Department of Social Services;
- The child's case worker from a private children and youth agency with whom the Social Services Administration contracts;
- The supervisors or managers of the local department of social services; and
- Other child welfare agency administrators with access to the case plan as authorized by State law for purposes of care of individual children.

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 are authorized by the local department of social services to receive such disclosures.

Documentation Needed for Accessing Child's Education Record

In order to obtain the child's education record the agency representative must provide documentation that the agency is responsible for the care of the child. This documentation can be in the form of a letter to the school system on agency letterhead stating that the child is in the care of the agency and that the agency representative seeking access is authorized to receive the record.

Conclusion

We ask for your continued assistance and collaboration in addressing the educational needs of children in out-home-placement by adhering to the new provisions of FERPA and allowing for the sharing of education records in a timely and efficient manner. We look forward to working together to improve educational outcomes for these vulnerable students.