

# Foster Care & Education

Q&A

## HOW THE UNINTERRUPTED SCHOLARS ACT HELPS CHILD WELFARE STAFF ADVOCATE FOR YOUTH IN CARE

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

A: Child welfare workers need accurate information about a child or young adult's education history and needs to help the child learn effectively and to make informed placement recommendations to the court. Selecting a placement that is close to the young person's current school and provides the proper education supports, including special education if necessary, will improve the student'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 or young adult'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 that relates directly 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 certain students' education records from schools.

### **Q: What has changed in FERPA that affects students in foster care?**

A: The Uninterrupted Scholars Act (USA) and became effective on January 14, 2013. The law makes two very important changes to FERPA:

(1) USA creates a new exception under FERPA that makes it easier for schools to release a child or young adult's education records to child welfare agencies without the prior written consent of the parents (or student if the student is 18 years old or in postsecondary education). *This does not mean that child welfare agencies should leave out parents. Good practice dictates that child welfare agencies make efforts to keep parents informed and involved.* (2) 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.

This factsheet reflects two resources from May 2014: (1) [Joint letter to state child welfare and education by the US Departments of Education & Health and Human Services](#), and (2) [Family Policy Compliance Office Guidance on the Amendments to the Family Educational Rights and Privacy Act by the Uninterrupted Scholars Act](#)

## **Q: Why were these changes needed?**

A: Previously, FERPA had caused delays and problems for child welfare agency representatives in getting critical education records. Child welfare law requires that child welfare agencies maintain education records as part of the child or young adult's case plan. Federal law now also requires child welfare agencies to ensure that children and young adults in their care are enrolled in school, that school placements are as stable as possible, and that young people who change schools are promptly enrolled with all school records. To meet these requirements, child welfare agencies need quick access to the student's education record.

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

A: The new amendment permits (but does not require) 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 or young adult's "care and protection." This includes only children placed in out-of-home care by the agency. Remember, even for students that are not in this category, the child welfare agency may nonetheless be able to get records through other exceptions in FERPA.

## **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. One example of an appropriate redisclosure would be to a contractor providing services to address a student's education needs. 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.](#)

## **Q: Does the USA apply to early intervention records for children with developmental disabilities under age 3 and special education records for older children?**

A: The USA applies to the early intervention and special education records of children in placement. Moreover, when children under age 3 need surrogate parents the children and youth and early intervention agencies must consult, and personally identifiable information may be shared during this consultation.

## **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 [cleducation@americanbar.org](mailto:cleducation@americanbar.org). 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](#).