

Foster Care & Education Q&A

HOW CAN CHILD WELFARE AGENCIES ACCESS EDUCATION RECORDS IN COMPLIANCE WITH THE FAMILY EDUCATION RIGHTS AND PRIVACY ACT (FERPA)?

Q: Why is sharing information between child welfare, education agencies, and the courts important?

A: Sharing data and information among child welfare, education, and court systems can improve the systems and help children. With accurate information about a child's educational needs, the child welfare worker 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.

Q: What is the impact of FERPA on information sharing?

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

FERPA is (often needlessly) perceived as an obstacle to schools sharing information with child welfare agencies and

the courts. FERPA has a number of important exceptions to the no-disclosure rule, and many states and localities around the country are successfully sharing educational information for children in care among agencies.

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. So, the first step should *always* be to seek the parent's consent. Los Angeles, California, for example, as well as many other jurisdictions, automatically ask the parents or guardians to sign a "parental consent form" 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 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." On the theory that the agency is "acting as a parent in the absence of a parent or guardian" for children in their custody, some states have enacted laws or regulations that define "parent" to include a child welfare agency representative so that the agency can consent to the release of school records.

Q: Can a school release education records to comply with a court order?

A: Yes. Another important FERPA exception authorizes the release of student-specific information from a child's education records when needed to comply with a judicial order or subpoena. Under this exception, 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.

Q: Is there any child specific information that schools can release without parental consent?

A: 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. However, a social security or school identification number is *not* directory information.

Q: Are there other FERPA exceptions that can help child welfare and education systems share personally identifiable (PII) student information for statistical purposes, and how do recent changes to the FERPA regulations impact data sharing?

A: In many cases, statistical information will not be personally identifiable and therefore will not trigger FERPA at all. However, to share PII for statistical purposes, there are two relevant exceptions. In December 2011, the FERPA regulations were amended to facilitate data sharing, particularly through statewide longitudinal data systems such as those required by the No Child Left Behind Act. The new rules clarify two existing exceptions to the non-disclosure without consent rule. One exception permits state and local education entities to designate an "authorized representative" to release PII for an "audit or evaluation of Federally-supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs." The new rules add a definition of an "authorized representative" and clarify that the term can include a child welfare agency. Another addition was a broad definition of "education program" to clarify that it can include, for example, an early childhood education, elementary and secondary education, or career and technical education programs operated by a non-education agency.

The second exception permits education agencies to disclose PII to organizations conducting studies to develop, validate, or

administer predictive tests; administer student aid programs; or improve instruction. The term "organizations conducting studies" includes federal, state, and local agencies and independent organizations.

These changes open the possibility that an education agency could, by written agreement, designate a state or local child welfare agency as an "authorized representative," and to release education records, for an audit of a federally funded after school program to determine whether children in care are benefitting. Or a state education agency, via a written agreement, could share education information with the state child welfare agency for a study of a program designed to improve instruction for children who have experienced family violence or to improve instruction for children in care in general. For more details on these new changes, see *December 2011 FERPA Regulations: Information Sharing Around Child Welfare and Education* at http://www.americanbar.org/content/dam/aba/administrative/child_law/ferpa_regs_dec_2011_final.pdf.

Q: Where can I learn more about this topic and other topics that relate to education for children in care?

A: The Legal Center for Foster Care and Education is available for training and technical assistance on data and information sharing. We 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, please email ccleducation@americanbar.org. For a manual and tools about information sharing between child welfare and education, please 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 www.abanet.org/child/education/dataexchange.