

NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY

FERPA and Homeless Students: Understanding and Applying the Law

FERPA, the Family Educational Rights and Privacy Act (20 USC 1232g), is the primary federal law governing education records. It seeks to protect individual student privacy while securing parental rights to view education records. This fact sheet provides an overview of the legislation while explaining its relevance to the education of homeless children and youth.

OVERVIEW

FERPA's primary provisions include the following:

- **Parental Access to Records.** Parents have the right to inspect and review the education records of their children. They can review records maintained by both the both the school district and the state education department. States and districts must establish a reasonable timeframe for granting access to records, but in no case can that timeframe be more than 45 days. 20 USC 1232g(a)(1).
- **Non-Parental Access to Records.** Educators must obtain the parental permission prior to releasing education records or personally identifiable information to a third party. Parental permission for the release of records is **not** required for certain individuals and entities, including:
 - 1) School or school district officials, including teachers, who have a legitimate educational interest in the student. The agency holding the records is responsible for determining who has a legitimate interest.
 - 2) Officials of other schools or school systems in which the student is seeking to enroll. Parents must be notified of the transfer of records and receive a copy of the record if desired.
 - 3) State education department officials and the Secretary of the U.S. Department of Education when such information is necessary to audit or evaluate a federally-supported education program.
 - 4) Entities/Individuals associated with applications for, and receipt of, financial aid.
 - 5) Organizations conducting studies for an educational agency for the purpose of developing, validating, or administering predictive tests or improving instruction.
 - 6) Accrediting organizations.
 - 7) Entities/Individuals, connected with an emergency, who must receive student information to protect the health or safety of the student or other persons. 20 USC 1232g(b)(1).
- **Directory Information.** General directory information such as the student's name, address, telephone listing, date and place of birth, etc. can be released without specific permission. However, districts must inform parents of the categories of information in the directory and provide an opportunity to opt-out of the release of such information
- **Notice of Rights.** Parents must be informed of their FERPA rights on an annual basis. 34 CFR 99.7.
- **Right to Appeal.** Parents have the right to a local agency hearing in the event that they want to challenge the content of education records or assert a violation of a student's privacy rights. 20 USC 1232g(a)(2). Parents may also file FERPA-related complaints with the Family Policy Compliance Office at the U.S. Department of Education (<http://www.ed.gov/policy/gen/guid/fpco>). 20 USC 1232g(g).

ARE THERE ANY SPECIAL RULES FOR TRANSFERRING RECORDS BETWEEN SCHOOLS?

As noted above, FERPA allows records to be transferred between schools (without parental permission) when a student seeks to enroll in a new school. 20 USC 1232g(b)(1)(B). The McKinney-Vento Homeless Assistance Act requires that the school records of homeless students be maintained so that they are available, in a timely fashion, when a student enters a new school or school district. 42 USC 11432(g)(3)(D). Enrolling schools must immediately request records from the previous school. 42 USC 11432(g)(3)(C)(ii). Finally, McKinney-Vento requires that students be immediately enrolled in school and attending classes even if their education records are awaiting transfer or they are lacking other documents typically required for enrollment. 42 USC 11432(g)(3)(C)(i).

ARE PARENTS ENTITLED TO COPIES OF STUDENT RECORDS?

In general, FERPA speaks of a parent's right to "inspect and review" student records. 20 USC 1232g(a)(1)(A). There is no general right to receive a copy unless the state or school district has created such a right on its own. However parents can request, and are entitled to receive, an actual copy of the records if the student enrolls in a new school or school district and his/her records are transferred. 20 USC 1232g(b)(1)(B). It may be helpful to advise homeless parents to always obtain copies of school records so that they may immediately present them to new schools upon enrollment. Such action would allow schools to make more appropriate class and program placements while they await official records from the previous school.

ARE PARENTS REQUIRED TO PAY ANY FEES WHEN ACCESSING RECORDS?

Schools, school districts, and states **may not** charge a fee for searching or retrieving education records. 34 CFR 99.11(b). They **may not** charge a fee for copies if doing so would prevent a parent from exercising the right to inspect and review education records. 34 CFR 99.11(a).

WHICH AGENCY PERSONNEL CAN ACCESS RECORDS INFORMATION RELATED TO HOMELESSNESS?

School and school district officials with a legitimate educational interest in homeless students may access their files without parental permission. This list would likely include the school district homeless liaison and support staffers, transportation coordinators (who arrange school of origin transportation), school meal coordinators (who process paperwork for homeless students' automatic eligibility for free school meals, Title I program coordinators (who may share responsibilities for certain programming for homeless students), and preschool providers (who prioritize homeless children for enrollment). Other individuals having access to homeless student files include state coordinators of homeless education and officials at the U.S. Department of Education who are monitoring and evaluating state and local homeless education programs.

ARE THERE FERPA-RELATED CONCERNS ABOUT PROVIDING INFORMATION ABOUT HOMELESS STUDENTS TO THIRD PARTIES?

Homeless liaisons and state coordinators often partner with other agencies (*e.g.*, housing authorities, social services agencies that provide shelter), organizations (*e.g.*, non-profits providing services or program funding), and individuals (*e.g.*, host families, relatives) to provide comprehensive services to homeless families. Some educators seek to verify homeless status or eligibility for services by contacting similar individuals/entities. In conducting such activities, educators must be careful not to release personally identifiable information about the student/family unless they first have the permission of a parent. 20 USC 1232g(b)(1).

Sharing personal information from a student's education record not only violates FERPA, but could impair the well-being of the child or family. For instance, providing a housing authority with information about the living situation of a homeless family that is doubled-up in public housing may jeopardize the permanent housing of the host family (due to the breaking of occupancy rules associated with the lease), and thus the temporary housing of the homeless family. Also, third parties may share such information with other members of the community, which could lead to playground teasing and stigmatization of homeless students.

ARE THERE SPECIAL CONSIDERATIONS FOR UNACCOMPANIED YOUTH?

There are certain FERPA provisions that have a special relevance for unaccompanied youth:

- Typically, FERPA rights (inspecting and reviewing records, granting permission for third party review) belong to the parent rather than the student. However, the FERPA definition of "parent" includes "a parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian." 34 CFR 99.3. Thus, schools can allow individuals "acting as a parent" to access education records, including report cards, attendance records, etc.
- Youth who reach the age of 18 can assume FERPA rights for themselves. 34 CFR 99.5. As noted above, schools can transfer records to enrolling schools even if they don't have parental permission. 20 USC 1232g(b)(1)(B). This rule also applies to unaccompanied youth.

ARE THERE SPECIAL CONSIDERATIONS FOR STUDENTS INVOLVED IN DOMESTIC VIOLENCE SITUATIONS?

There are certain FERPA provisions that have a special relevance for domestic violence survivors:

- Both parents of a student have the right to inspect and review education records. 20 USC 1232g(a)(1)(A). Further, FERPA requires educational agencies to maintain a record indicating all individuals, agencies, or organizations, which have requested or obtained copies of a student's education records. 20 USC 1232g(b)(4)(A). This information must be included with the student's other education records. 20 USC 1232g(b)(4)(A). Unfortunately, this ability to access records may assist an abusive parent in finding children and abuse victims who have fled a domestic violence situation. Families should be warned of this possibility.
- FERPA regulations indicate that an abusive parent can be denied access to education records if there is a court order, State statute, or legally binding document that specifically revokes the abusive parent's rights. 34 CFR 99.4. Outreach to domestic violence service providers (*e.g.*, shelters) and attorneys working with domestic violence survivors is necessary to ensure that they work to include provisions about education records in protective orders.
- A few states have helpful statutes that specifically address the intersection of education records, abusive parents, and protection orders. For instance, in Massachusetts, once a protection order is granted, the abusive parent is automatically denied access to education records even if the order doesn't specifically mention education records. MGLA 71 § 34H(a). Illinois' protection order statute specifically lists "prohibition of access to records" as a potential item to be included in a protection order, which encourages judges to consider the issue of school records when issuing such orders. 750 ILCS 60/214.

More information is available through the National Law Center on Homelessness & Poverty: (202) 638-2535, info@nlchp.org, www.nlchp.org.