



The Uninterrupted Scholars Act –

How Schools Can Share Information about Foster Children with Child Welfare Agencies

Today's webinar is presented jointly by:

June 13, 2013
2:00 p.m. EST

- U.S. Department of Education
- U.S. Department of Health and Human Services



Topics for Today

- Foster children – Program basics and why it's important to share information
- Federal child welfare law
- FERPA 101 – A primer on student privacy
- Uninterrupted Scholars Act – Sharing information about foster children
- Let's talk specifics – Some common scenarios
- Where to get help



Today's Presenters

From U.S. Department of Health and Human Services:

- Taffy Compain, National Foster Care Specialist
- Elizabeth Loevner, Policy Division

From U.S. Department of Education:

- Dale King, Chief, Family Policy Compliance Office
- Baron Rodriguez, Privacy Technical Assistance Center

Child's Journey Through Foster Care



Report of child abuse or neglect.

Parent's home



Child not safe at home.



Court



Court determines whether the child should be removed from home.



Foster home



Court sends child to foster home with services.

or

Relative's home



Court sends child to a relative's home with services.

or

Parent's home



Court sends child home with or without services.

Court



Court reviews progress and determines if:

- the child will return home,
- parental rights will be terminated so the child is free for adoption,
- the child will live permanently with a relative, or
- the child will stay in foster care longer.

Foster home



Child remains in foster care while options for permanent family are explored.

or

Permanent home



Parental rights terminated. Child adopted or custody given to another caregiver.

or

Parent's home



Family completes reunification plan. Child returns home.



A Majority of Children in Foster Care are School Aged



Number of children and youth in foster care on September 30, 2009*	423,773	
<u>Age</u>	<u>Number</u>	<u>Percent</u>
Young children (age 0-4)	129,753	31
School age children and youth (age 5-17)	286,895	67.7
Young Adults (age 18-21)	18,333	5



More Likely to Have Repeated a Grade



- **83% held back by the 3rd grade** – *Children's Law Center of Los Angeles*
- **Nearly 45% of youth in care in the New York State study reported being retained at least once in school** – *Advocates for Children of New York, Inc.*
- **Chicago Public School (CPS) students in out-of-home care were almost twice as likely as other CPS students to be at least a year old for their grade** – *Chapin Hall Center for Children at the University of Chicago*



High Rates of School Mobility

- Children and youth have an average of one to two home placement changes per year while in out-of-home care – *U.S. Department of Health and Human Services*
- A study of 479 alumni of foster care in Oregon and Washington found that 65% experienced seven or more school changes from elementary through high school – *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study*
- In an ongoing three-state study of youth aging out of care, over a third of young adults reported having had **five or more school changes** – *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Conditions of Youth Preparing to Leave State Care*



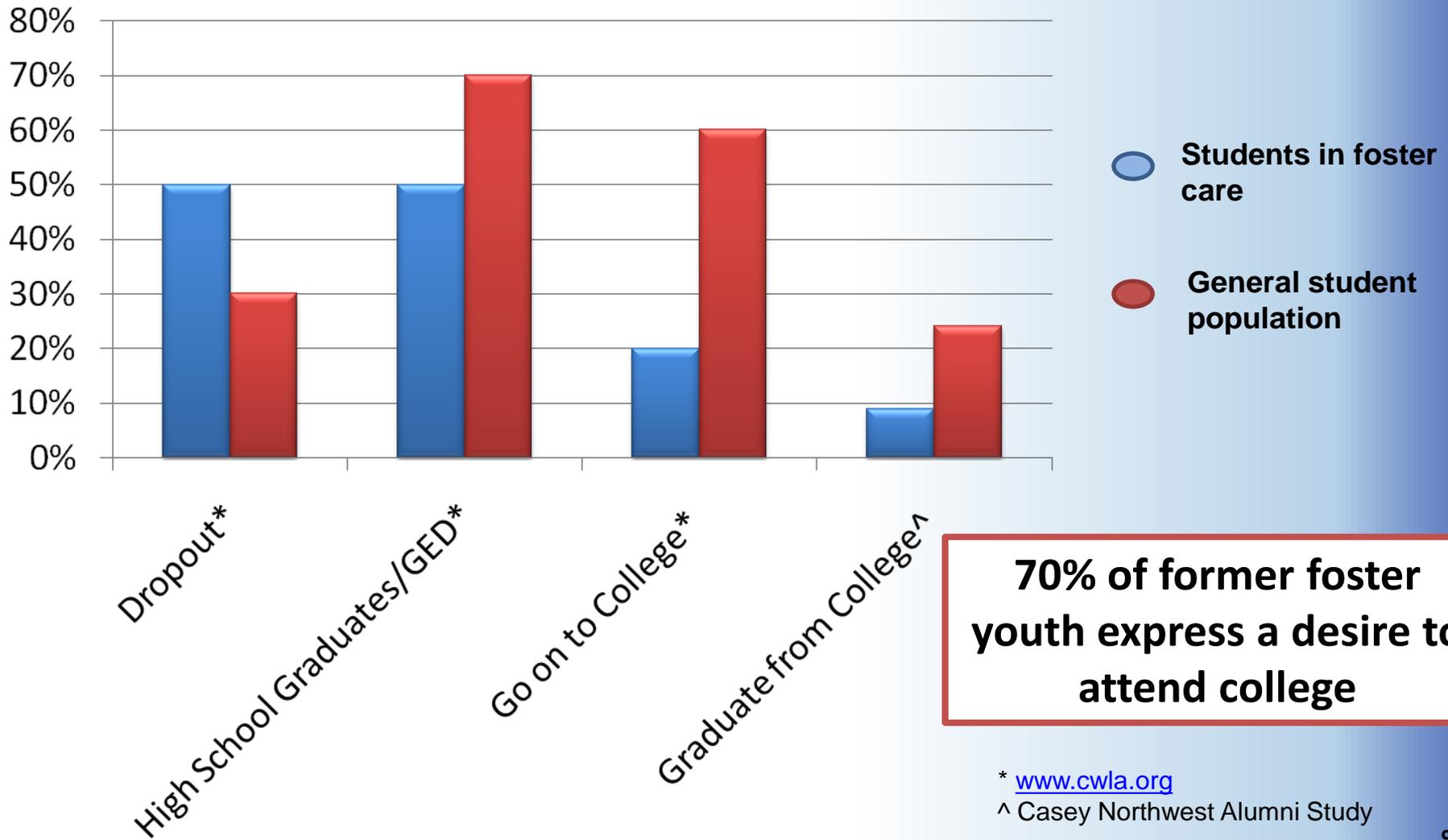
Overrepresented in Educational Achievement Gaps



- **Children in foster care are more likely to attend a low achieving school than other children (78% vs. 43%) - 2004**
Chapin Hall Center for Children at the University of Chicago
- **Score 16 to 20% below non-foster youth in statewide standardized tests - Washington State Institute for Public Policy, 2001**
Report on the Educational Attainment of Foster Youth
- **After completing 10th or 11th grade, on average read at only a seventh grade level. Only approximately 44% read at high school level or higher - Midwest evaluation of the adult functioning of former foster youth: Conditions of youth preparing to leave state care (2004)**

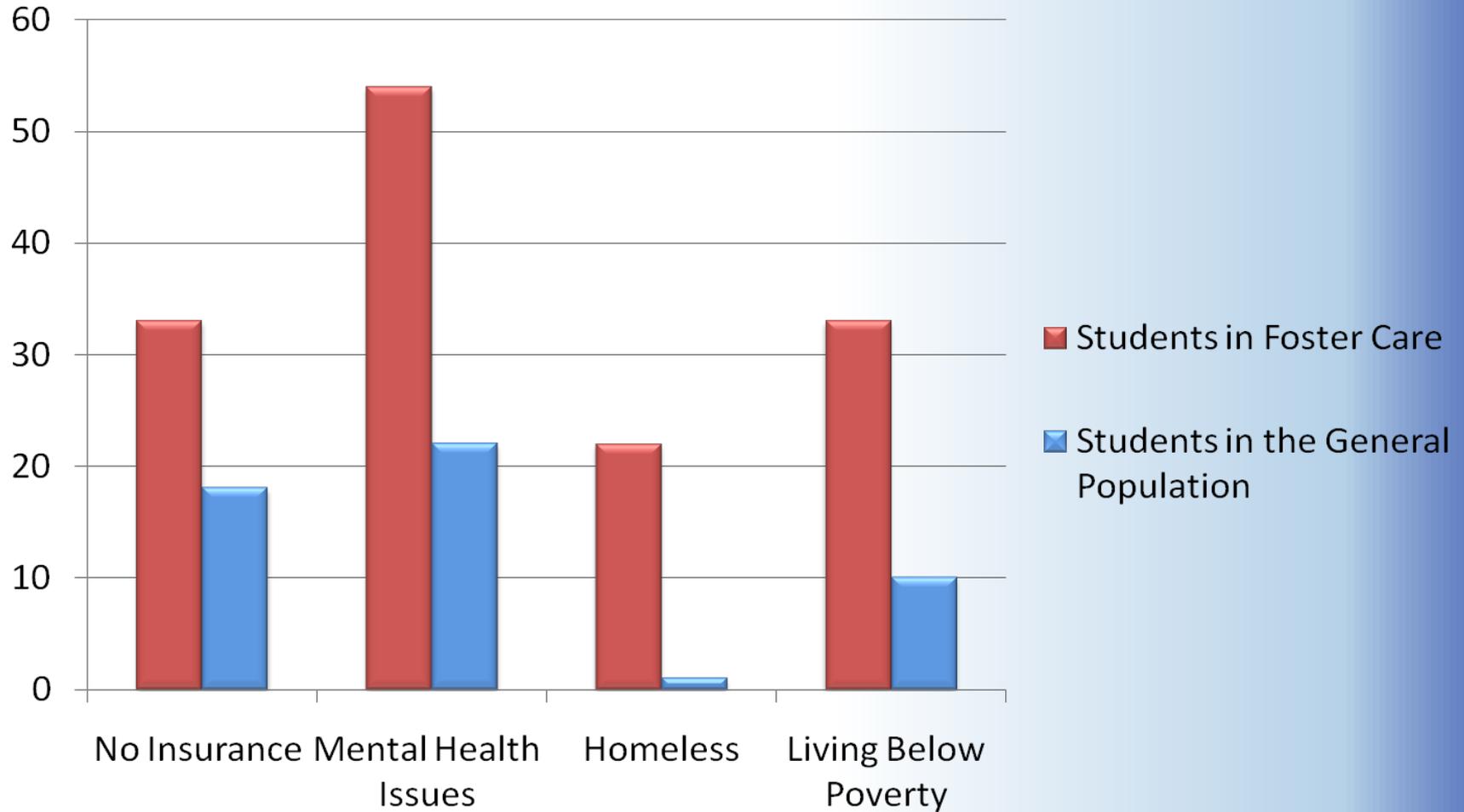


Foster Care Alumni Studies: Education Outcomes





Adult Outcomes





Why is School Stability Important?



- Close to 60% of children placed in out-of-home care return to their parents and their communities within a year of placement
- Students returning home from foster care placement often return to their schools of origin with significant academic delays
- Can be a positive counterweight to abuse, neglect, separation, and impermanence



The Uninterrupted Scholars Act and Federal Child Welfare Law



- Overview of Federal child welfare funding
- Child welfare agency requirements regarding education:
 - Education records
 - Educational stability
 - School enrollment





Federal Child Welfare Funding

- Child welfare services are funded through a variety of Federal, State, Tribal, and local sources
- Two major Federal sources of child welfare funding are Titles IV-B and IV-E of the Social Security Act



Title IV-B Funds

- Provides a variety of discretionary and mandatory funding
- Funding is available for a wide range of child welfare-related activities, such as:
 - Family preservation
 - Child abuse and neglect prevention
 - Promoting safety, permanency, and well-being for children in foster care and adoptive families
 - Improving outcomes for children affected by substance abuse



Title IV-E

- Open-ended entitlement
- Provides funding to eligible States and Tribes for a portion of the foster care, adoption and, at option, relative guardianship costs
- Funding is available for:
 - Payments made on behalf of children receiving foster care maintenance, adoption assistance, and guardianship assistance payments
 - Allowable associated administrative and training costs



Case Plan Requirements

- Child welfare agency workers must develop a written case plan for each child in foster care
- Among other things, the case plan includes the education records of the child, including the most recent information regarding:
 - The names and addresses of the child's education providers
 - The child's grade level performance
 - The child's school record
 - Any other relevant education information the child welfare agency determines to be appropriate



Case Plan Requirements

- Child welfare agency workers must:
 - review and update the child's education record each time the child is placed in foster care,
 - provide the education record to the foster parent/provider, and
 - provide the education record to the child at no cost when the child exits care at the age of majority in the State/Tribe.



Educational Stability Plan



- As a part of the case plan developed for every child in foster care, the child welfare agency must address the child's educational stability



Educational Stability Plan

- When placing a child in foster care, or, when a child is changing foster care placements, the agency must:
 - consider the appropriateness of the child's current school and the proximity of that school to the foster care placement;
 - AND
 - coordinate with the local educational agency to ensure the child can stay enrolled in his or her school of origin despite the foster care placement.



Educational Stability Plan

- However, if the child welfare agency determines it isn't in the child's best interests to stay in the same school, the agency must ensure that
 - the child is immediately enrolled in a new school, and
 - all the child's education records are provided to that new school.



School Enrollment

- Child welfare agencies must assure that each child receiving a Federal foster care payment is a full-time elementary or secondary school student (or is incapable of attending school due to a medical condition)
- Federal child welfare guidance encourages child welfare agencies to ensure that children are not only enrolled, but are in fact attending school



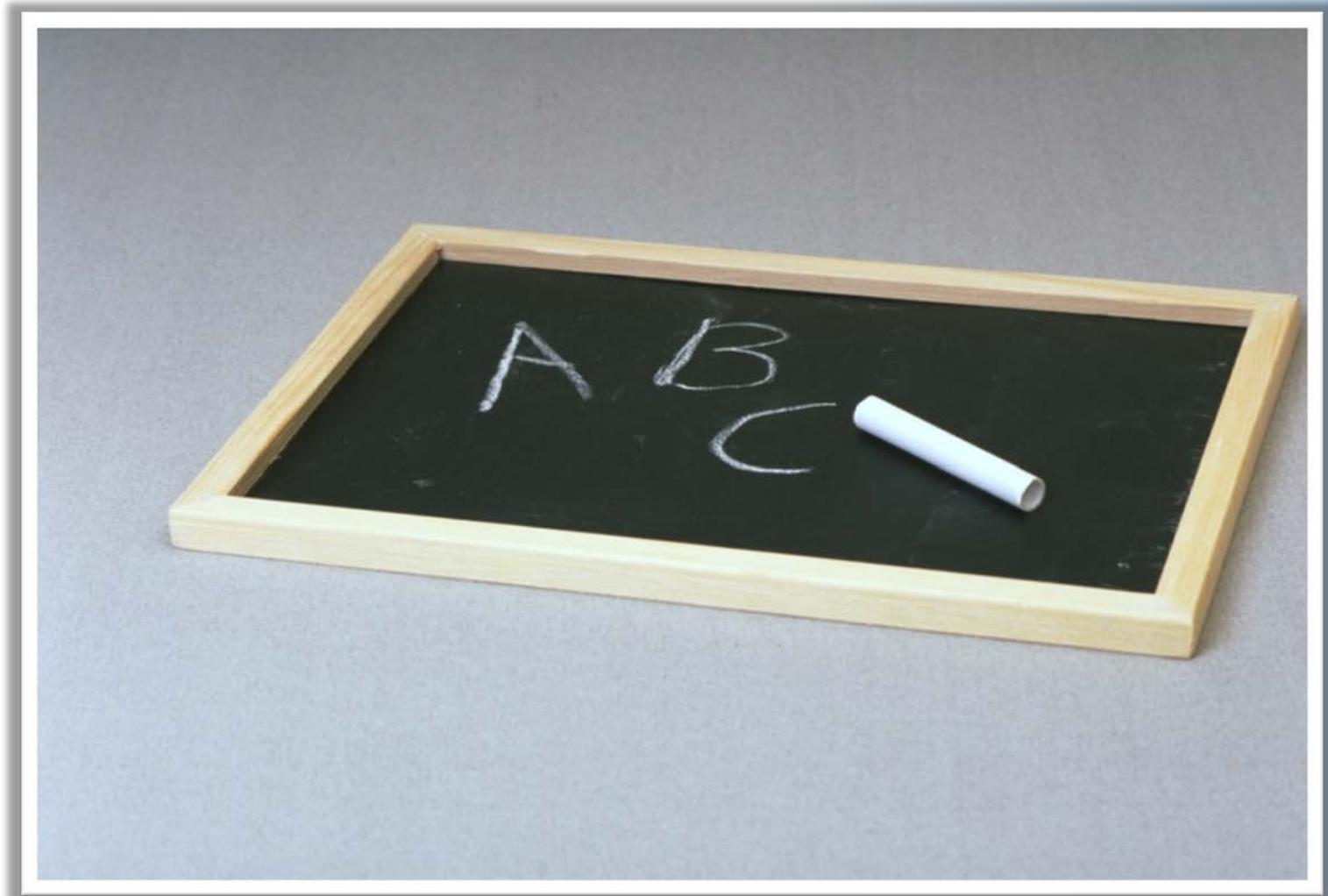
Benefits of Partnership

Focus on our most vulnerable student groups is essential if we are to:

- Realize the goal of equity in education for all students
- Improve graduation rates and decrease dropout rates
- Increase college and career readiness
- Turn around our lowest performing schools
- Shrink the achievement gap



FERPA Basics





Family Educational Rights and Privacy Act (FERPA)

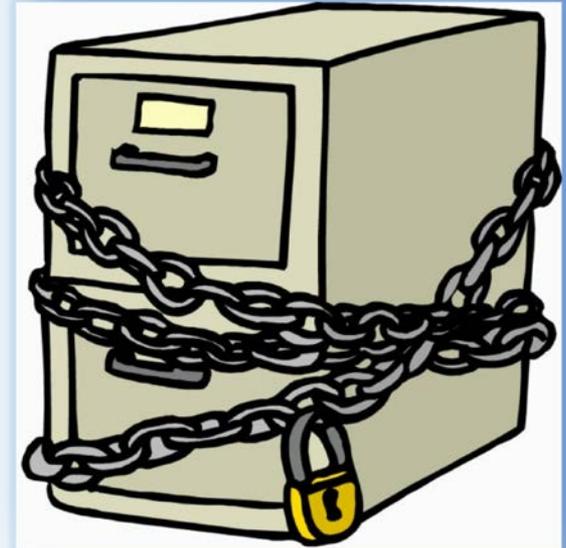


- Statute: 20 U.S.C. § 1232g (§ 444 of the General Education Provisions Act (GEPA))
- Regulations: 34 CFR Part 99
- December 2, 2011 – <http://www.gpo.gov/fdsys/pkg/FR-2011-12-02/pdf/2011-30683.pdf> (effective January 3, 2012)
- Legal challenge: EPIC vs. U.S. Department of Education



What is FERPA?

- Gives parents and eligible students the right to access and seek to amend education records
- Protects personally identifiable information (PII) from education records from unauthorized disclosure
- Written consent is required to disclose PII – unless an exception applies





What are Education Records?

"Education records" are records that are –

§ 99.3

- Directly related to a student; and
- Maintained by an educational agency or institution or by a party acting for the agency or institution.





What is Personally Identifiable Information (PII)?



Name



Mother's maiden name



Address



Date of birth



Social Security Number



Parent's name



What are the Exceptions to the Consent Requirement?



Some of the exceptions:

§99.31

- School officials with legitimate educational interests
- Schools in which a student seeks or intends to enroll
- State and local officials pursuant to a State statute in connection with serving the student under the juvenile justice system
- To comply with a judicial order or subpoena
- Audits, evaluations, and studies
- Directory information
- Health and safety emergencies



What is an Education Program?

- Any program principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, special education, job training, career and technical education, and adult education; and
- Any program that is administered by an educational agency or institution

§99.3



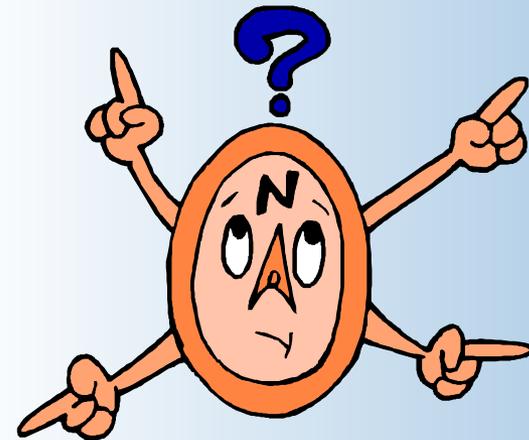


Before the Uninterrupted Scholars Act



Some schools and LEAs were sharing education records with child welfare agencies prior to passage of the Uninterrupted Scholars Act using FERPA exceptions, such as court order and "parent."

But there was a lot of *CONFUSION* about what FERPA permitted.





Uninterrupted Scholars Act – What's Changed?



New exception to the general consent rule passed by Congress January, 2013, P.L. 112-278

- Disclosure permitted to: “Agency caseworker or other representative” of a State or local CWA who has the right to access a student’s case plan
- Disclosure permitted when: The CWA is “legally responsible ... for the care and protection of the student”
- Provisions for tribal organizations as well



What Can the CWA do with the Education Records?



- The CWA can disclose (or re-disclose) the records to “an individual or entity engaged in addressing the student’s education needs”
- This individual or entity must be authorized to receive the records and the disclosure (or re-disclosure) must be consistent with State confidentiality law



Changes to Notice Provisions

- Uninterrupted Scholars Act amends the requirement to notify a parent before complying with a subpoena or court order to disclose records when the parent has been a party to a court order proceeding involving child abuse, neglect, or dependency
- Theory behind this change: The parent has already been informed by being involved in the child abuse, neglect, or dependency proceeding



Permitted: Sharing to Address Educational Needs



- The Uninterrupted Scholars Act allows schools to disclose education records to CWAs to address student education needs
- If a school or district is sharing information for other purposes, it may need to look at other FERPA exceptions, such as the studies or audit/evaluation exception
- But remember the “education program” limitation when sharing under the audit/evaluation exception



Scenario One



A high school receives a request from the local child welfare agency (CWA) for all school records relating to certain students who are in foster care. Does the high school have to turn over all of these records or just the information that the high school thinks the child welfare agency needs to see?



Scenario Two



Does a school sharing education records with a CWA need to have a written agreement with that agency prior to disclosing PII from education records?



Scenario Three



If the CWA hires contractors to function as caseworkers, rather than using its own employees, may the CWA redisclose education records to those contractors? And if so, does the CWA have to record the redisclosure?



Scenario Four



May a CWA use education records for purposes other than addressing a foster child's educational needs? For example, could the agency use these records to conduct investigations of child abuse or conduct research?



Scenario Five



A school district is willing to turn over education records to a CWA, but wants to require the CWA to destroy the records once the children in question are no longer in the foster care system. Does FERPA require this? And can the school district make the CWA do this?



Scenario Six



Could an LEA and a CWA agree to enter into an arrangement where the LEA sends information on children in foster care to the CWA on a monthly basis?



Scenario Seven



What should a school do if it is notified that a child is in foster care and then the biological parent asks to meet with the child's teacher and review the student's progress? Does FERPA mean that the school can no longer talk to the biological parent?



Scenario Eight



What about the situations where the child is living with a relative because the home situation is unsafe? Can the school share records with the relative?



Scenario Nine



Let's say a district shares education records with a CWA and the CWA inappropriately shares these records with the press. Is the CWA potentially subject to FERPA's "five-year rule," so that the CWA can't receive records from this district for five years?



Scenario Ten



May a State decide to share education records for children in foster care and send records to the CWA directly from the SEA, rather than from individual schools and LEAs?



Scenario Eleven



Normally FERPA requires schools to record disclosures. Do schools need to record disclosures to child welfare agencies?



Scenario Twelve



Can schools also disclose special education records to CWAs, such as Individualized Education Programs (IEPs) under this exception?



Scenario Thirteen



An appropriate CWA representative asks to receive education records for children whose families are receiving in-home services (children who are not in foster care). Does the Uninterrupted Scholars Act allow schools to turn over these records?



Where to Go for Help





Contact Information



Privacy Technical
Assistance Center

Privacy Technical Assistance Center

Telephone: (855) 249-3072

FAX: (855) 249-3073

Email: privacyTA@ed.gov

Website: <https://studentprivacy.ed.gov>