



NATIONAL ASSOCIATION FOR THE EDUCATION OF HOMELESS CHILDREN AND YOUTH

*NAEHCY's Every Student Succeeds Act Resource Series*

## **Privacy and Homelessness: A Technical Assistance Tool**

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The Family Educational Rights and Privacy Act (FERPA) is a federal law that protects the privacy of student education records. 20 USC §1232g; 34 CFR Part 99. Specifically, it prohibits a school from disclosing personally identifiable information from students' education records without the consent of a parent or eligible student, unless an exception to FERPA's general consent rule applies.

Often, questions arise as to FERPA's requirements and how they affect the sharing of educational information about children and youth experiencing homelessness. Common challenges include protecting survivors of domestic violence, appropriate handling of directory information, and how to access the education records of unaccompanied youth. This document seeks to explain FERPA's basic provisions, how they relate to new privacy protections in the McKinney-Vento Act, and how schools can protect children and youth who are homeless while appropriately sharing educational information.

### **Basic Information**

#### 1. What does the McKinney-Vento Act say about FERPA?

Under the McKinney-Vento Homeless Assistance Act, schools must treat information about a homeless child's or youth's living situation as a student education record, subject to all the protections of FERPA. 42 USC §11432(g)(3)(G).

#### 2. How does FERPA define "education records"?

Education records are those records that are: (1) directly related to a student; and (2) maintained by or for an educational agency or institution. 34 CFR §99.3. Therefore, under FERPA all records directly related to a student and maintained by a school are "education records", including records indicating eligibility for services provided under the McKinney-Vento Act and the Individuals with Disabilities Education Act (IDEA).

However, FERPA specifically exempts certain information from the definition of "education records." Among others, the exemptions include "records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to another person except a temporary substitute for the maker" (such as notes made and kept by a teacher or counselor). 34 CFR §99.3.

#### 3. Who can have access to a student's education records and provide consent for disclosures?

The rights to access education records and consent for their disclosure belong to the student's "parent". Those rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. 34 CFR §§99.3, 99.5. FERPA refers to these students as "eligible students." Schools also may allow students under age 18 to access their education records and provide consent for disclosures, as long as those rights do not supersede the rights of their parents. (See question 16, below.)

4. How does FERPA define “parent”?

Parent means 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 a guardian. 34 CFR §99.3. This definition is discussed further in question 12, below.

5. In general, what does FERPA say about the disclosure of education records?

Under FERPA, a parent or eligible student must provide a signed and dated written consent before a school discloses personally identifiable information from the student’s education records, unless an exception to the consent requirement applies. 34 CFR §99.30.

### **Exceptions to the Consent Requirement**

6. In general, what are the exceptions to the consent requirement?

FERPA includes 16 exceptions to the consent requirement. 34 CFR §99.31. The exceptions most likely to be relevant for McKinney-Vento liaisons and others working with students experiencing homelessness are detailed below.

7. Under what circumstances can a student’s previous school release education records to the student’s new school without consent?

A school district can release education records to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer. 34 CFR §99.31(a)(2). The district must make a reasonable attempt to notify the parent of the disclosure, unless the district’s annual FERPA notification informs parents that school records will be forwarded to enrolling schools. 34 CFR §99.34. Most school districts include this information in their annual FERPA notification as a matter of course.

8. Under what circumstances can education records be released to other school officials without consent?

A school district or school can release education records to other school officials, including teachers, within the district or school whom the district or school has determined to have legitimate educational interests. The district or school must use reasonable methods to ensure that school officials obtain access only to those education records in which they have legitimate educational interests. 34 CFR §99.31(a)(1).

9. Under what circumstances can education records be released to financial aid providers without consent?

Schools can release education records in connection with financial aid for which a student has applied or which the student has received, if the information is necessary to determine eligibility for the aid, determine the amount of the aid, or determine or enforce the terms and condition of the aid. 34 CFR §99.31(a)(4).

*A McKinney-Vento liaison can verify an unaccompanied youth’s status as it relates to completing the FAFSA or obtaining other financial aid, without parental consent.*

10. What is “directory information”?

Directory information is information a school may maintain about a student, but that would not generally be considered harmful or an invasion of privacy if disclosed. Examples of directory information may include: name, address, telephone listing, email, photograph, date and place of birth, major field of study, dates of attendance, grade level, participation in extracurricular activities, honors and awards, and the most recent educational agency or institution attended. **In the case of McKinney-Vento students, information about the student’s living situation, including the student’s address, must not be treated as directory information.** It must be treated as a student education record, subject to all the protections of the Family Educational Rights and Privacy Act (FERPA). 42 USC §11432(g)(3)(G). US Dept. of Education (July 2016). *Education for Homeless Children and Youths Program Non-Regulatory Guidance*, A-6.

11. Can schools disclose directory information without consent?

Yes, but with limits for McKinney-Vento students. Under FERPA, directory information can be disclosed without consent. 34 CFR §99.31(a)(11). However, under the McKinney- Vento Act, information regarding a student’s living situation is not considered directory information and must be provided the same protections as other non-directory, personally-identifiable information contained in student education records under FERPA. 42 USC §11432(g)(3)(G). *Non-Regulatory Guidance*, A-6. Therefore, a McKinney-Vento student’s address and other information about the student’s living situation cannot be released without consent.

12. Does the ability to disclose directory information without consent give schools the right to contact landlords, public housing agencies, or law enforcement to share that students may be doubled-up with others in violation of lease terms or occupancy limits?

No. Information about a McKinney-Vento student’s living situation, address and homelessness is part of the student’s education record and cannot be disclosed without consent. In the past, children have been forced from temporary housing when schools have disclosed their address to third parties. Families have been harassed and stigmatized by such disclosures. Disclosing a family’s address to landlords or authorities violates the McKinney-Vento Act and has no relation to promoting the students’ academic achievement.

Unaccompanied Youth<sup>1</sup>

13. Based on FERPA’s definition of “parent,” if a youth is separated from his or her parent or guardian and is in the care of another individual who is acting as a parent in the absence of a parent or a guardian, can that individual have access to the student’s education records and provide consent for disclosures?

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<sup>1</sup> Unaccompanied youth means a child or youth who is considered homeless under the McKinney-Vento Act and who is not in the physical custody of a parent or guardian. 42 USC §11434a(6). The McKinney-Vento Act removes barriers that might otherwise keep unaccompanied youth out of school. Recognizing the unique needs of unaccompanied youth, the Act requires schools to enroll them without a parent or legal guardian and requires homeless liaisons to assist unaccompanied youth with school enrollment and attendance. 42 USC §§11432(g)(1)(H)(iv), (g)(3)(C), (g)(6)(A)(x). Liaisons also must identify unaccompanied homeless youth (distinguishing between those who meet the Act’s eligibility criteria and those who do not).

Yes. In that situation, the caregiver would meet FERPA’s definition of parent and would have the rights afforded to parents under FERPA. U.S. Department of Education, “Family Educational Rights and Privacy Act (FERPA) and the Disclosure of Student Information Related to Emergencies and Disasters”, June 2010. Many unaccompanied youth have caring adults in their lives who meet this definition. Further, many states and school districts have policies that permit such adult caregivers to enroll unaccompanied youth in school under the McKinney-Vento Act.<sup>2</sup>

14. Based on FERPA’s definition of “parent,” if a youth is separated from his or her parent or guardian, and is in the care of another individual who is acting as a parent in the absence of a parent or a guardian, can that individual enroll the youth in school and speak with teachers and other school staff about the student and the student’s education?

*Can a school district McKinney-Vento liaison qualify as a “parent” under FERPA?*

*Unlike IDEA, FERPA does not prohibit a school district employee from serving as a parent. Therefore, if a McKinney-Vento liaison is acting as a parent in the absence of a parent or a guardian, nothing in the law prevents the liaison from accessing education records and consenting for their disclosure.*

Yes. In that situation, the caregiver would meet FERPA’s definition of parent and would have the rights afforded to parents under FERPA.

15. If a caregiver enrolls a youth in school pursuant to the McKinney-Vento Act, can that adult qualify as a “parent” under FERPA’s definition of “parent”?

Yes. When a caregiver enrolls a student in school under the McKinney-Vento Act and is acting as a parent in the absence of a parent or a guardian, that caregiver meets the definition of parent.

16. Can elementary and secondary schools provide FERPA rights to students under age 18?

Yes. Although FERPA does not specifically guarantee the rights of unaccompanied youth under 18, the law permits schools to allow students under age 18 to have access to their education records and provide consent for disclosures, as long as those rights do not supersede the rights of their parents. For example, a school may permit a minor student to inspect and review his or her education records. U.S. Dept. of Education (June 2010). *Family Educational Rights and Privacy Act (FERPA) and the Disclosure of Student Information Related to Emergencies and Disasters*; 34 CFR §99.5(b).

### Domestic Violence

17. Since both parents have the right to access education records, how can we protect students who have a parent who has been violent toward the student or the other parent?

FERPA requires schools to give full rights to either parent, unless there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights. 34 CFR §99.4. When sharing education information with one of the student’s parents may be

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<sup>2</sup> See, e.g., CAL. FAM. CODE §6550; National Center for Homeless Education (2007). “Caregiver Authorization Form.” *Local Homeless Education Liaison Toolkit, Appendix D*.

dangerous, these safety issues must be addressed in student records and information release procedures. *Non-Regulatory Guidance*, A-8. Measures to ensure student safety include:

- Collaborate with local domestic violence shelters to develop a shared protocol to ensure the safety of survivors of domestic violence.
- Suggest that parents opt out of the release of directory information.
- Ensure appropriate school officials are aware of the risks so they can exercise care when speaking with the student or other adults.
- Work with legal services to obtain a restraining order against the abusive parent and present that order to the school.
- Do not provide information from education records over the phone, as there is no way to verify the caller's identity or right to access the records. Schools should require the parent to come to the district office to present photo identification and review the records.
- If the student changes schools, consider routing records to the new school through the state department of education, so an abuser cannot follow the records to find the student.
- Keep in mind that the time frame for complying with a request to review an education record is up to 45 days (34 CFR §99.10(b)), so if a parent is in the process of obtaining a restraining order or fleeing an abuser, the school may allow victims time to seek help and safety prior to releasing the records.

*Many states have address confidentiality programs, which allow people to receive mail at a confidential address. The National Coalition Against Domestic Violence has a list of such programs at <http://www.ncadv.org/files/AddressConfidentialityProgramsintheUnitedStatesforwebsite.doc>.*

### FERPA Resources

U.S. Department of Education, FERPA information  
<http://www2.ed.gov/policy/gen/guid/fpco/index.html>

U.S. Department of Education, 2010 Guidance on FERPA and Disclosures Related to Emergencies and Disasters  
<http://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>

### Homelessness and Education Resources

The National Association for the Education of Homeless Children and Youth (NAEHCY)  
<http://www.naehcy.org>

The National Center for Homeless Education (NCHE)  
<http://nche.ed.gov/>