



FAQ on Family Educational Rights and Privacy Act (FERPA)

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The following questions were submitted during our [April 22, 2020 webinar](#) on “FERPA and Students Experiencing Homelessness.” For more information, visit SchoolHouse Connection’s [FERPA webpage](#) and search our [online Q&A](#) for “FERPA.”

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Sharing Information with Other School Officials

- 1. In my district’s database, students enrolled under special residency situations (homeless, educational guardianship, kinship care, etc.) are indicated with H or R next to student’s name. This information is visible to staff at each individual school. Is this a FERPA violation?**

It sounds like this release is too broad under FERPA. Information about a homeless student’s living situation is a protected education record. 42 U.S.C. §11432(g)(3)(G). Education records can be released to “other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.” 34 C.F.R. §99.31(a)(1)(i). The question is: who has a legitimate educational interest in knowing the student is experiencing homelessness, or otherwise in a special residency situation? If all staff at all schools can access this information, that is too broad. All staff at all schools do not have a legitimate educational interest in knowing the student is homeless. Certain key staff at each particular student’s school may have a legitimate interest—staff such as the student’s teacher(s), the school social worker, or the school counselor. It is important to keep in mind that staff and students may know each other outside of school. They may attend the same faith community or live in the same neighborhood. It is important to protect students’ and families’ privacy. It also is a good practice to let parents and students

know who has access to this information and to give them the opportunity to opt out of sharing.

Sharing homelessness too broadly not only violates FERPA, it also violates the McKinney-Vento Act's requirement to "remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths." 42 U.S.C. §11432(g)(1)(I). If information about a student's homelessness is widely shared, students and families will be less likely to feel comfortable revealing their situation, thereby creating a barrier to identification.

2. If we keep the names of our McKinney-Vento students in a google spreadsheet that the administration can see, does this violate FERPA?

It depends who in the administration can access the information. Information about a homeless student's living situation is a protected education record. 42 U.S.C. §11432(g)(3)(G). Education records can be released to "other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests." 34 C.F.R. §99.31(a)(1)(i). Many administrators have a legitimate educational interest in knowing who the McKinney-Vento students in the school or district are, to ensure barriers to their enrollment and retention in school are eliminated. For example, principals and assistant principals may be able to serve McKinney-Vento students better in the areas of full participation, student discipline, attendance, and others if they are aware of the students' challenges.

However, not all administrators have a legitimate educational interest in knowing the identities of all homeless students. Also, generally it is fair to assume that every school has students experiencing homelessness that are not known to the school. Therefore, rather than alerting administrators to particular homeless students, it is a better practice to train them to assume that one or more of students are experiencing homelessness at any given time, known or unknown, and administrators therefore should work to address those challenges for all students. It also is a good practice to let parents and students know who has access to this information and to give them the opportunity to opt out of sharing. These approaches can help the school comply with the McKinney-Vento Act's requirement to "remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths." 42 U.S.C. §11432(g)(1)(I). If information about a student's homelessness is widely shared, students and families will be less likely to feel comfortable revealing their situation, thereby creating a barrier to identification.

3. Would it fall under the "legitimate educational interest" exception when we need to inform teachers about the homeless students in their classroom when we have to provide required supplies for projects?

Education records can be released to “other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.” 34 C.F.R. §99.31(a)(1)(i). The local educational agency may have determined that a student’s teacher has a legitimate educational interest in knowing the student is experiencing homelessness. One reason may be to prompt the teacher to ask the McKinney-Vento program to provide supplies for projects.

However, it is fair to assume that every school, and possibly every classroom, has students experiencing homelessness that are not known to the school. Therefore, rather than alerting teachers to particular homeless students, it is a better practice to train teachers to assume that one or more of their students are experiencing homelessness at any given time, known or unknown, and teachers therefore should work to address those challenges for all students. For example, teachers can contact the Title I or McKinney-Vento program for any students who need help with supplies for projects. Title I or McKinney-Vento can create a system for teachers to request supplies for students.

It also is a good practice to let parents and students know who has access to this information and to give them the opportunity to opt out of sharing. These approaches can help the school comply with the McKinney-Vento Act’s requirement to “remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths.” 42 U.S.C. §11432(g)(1)(I). If information about a student’s homelessness is widely shared, students and families will be less likely to feel comfortable revealing their situation, thereby creating a barrier to identification.

4. In our school district, all social work counseling sessions are in a database that all teachers can access-- including counseling sessions of students in homeless situations. Does this violate FERPA?

It seems like this would be a FERPA violation, unless the students’ parents (or the students, if they are age 18 or older) consented to the release of this information to all teachers. Education records can be released to “other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.” 34 C.F.R. §99.31(a)(1)(i). The local educational agency may have determined that a student’s teacher has a legitimate educational interest in knowing the student is receiving social work counseling. However, it is unclear how all teachers could have a legitimate educational interest in knowing this information for students that are not in their class(es). In addition, if notes or details of what is discussed during social work counseling sessions are being shared with all teachers, this could be a significant breach of privacy. If the information includes the fact that the student is experiencing homelessness, that would make the breach even more significant.

In general, it is fair to assume that every school, and possibly every classroom, has students experiencing homelessness that are not known to the school, and students with adverse childhood experiences and ongoing trauma of which the school is not aware. Therefore, rather than alerting teachers to particular homeless students, it is a better practice to train teachers to assume that one or more of their students are experiencing homelessness at any given time, known or unknown, and teachers therefore should work to address those challenges for all students. It also is a good practice to let parents and students know who has access to this information and to give them the opportunity to opt out of sharing. These approaches can help the school comply with the McKinney-Vento Act's requirement to "remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths." 42 U.S.C. §11432(g)(1)(I). If information about a student's homelessness or social work or mental health challenges is widely shared, students and families will be less likely to feel comfortable revealing their situation, thereby creating a barrier to identification.

- 5. Our district experienced many withdrawals of McKinney-Vento students that I, as liaison, was not aware of until after the fact. Informing secretaries and registrars who our McKinney-Vento students are could help make sure students are aware of their right to stay in the school of origin when they are withdrawing. Can I share a list of McKinney-Vento student names with registrars and secretaries?**

Education records can be released to "other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests." 34 C.F.R. §99.31(a)(1)(i). Registrars and secretaries probably do have a legitimate educational interest in knowing who the McKinney-Vento students in *their* school are, to help make sure they are aware of their right to remain in the school of origin, as well as other rights and services.

However, generally it is fair to assume that every school has students experiencing homelessness that are not known to the school. Therefore, rather than alerting secretaries and registrars to particular homeless students, it is a better practice to train them to ask students and families who are withdrawing about why they are moving, whether their move is temporary or permanent, etc. Asking those questions upon withdrawal is an excellent strategy to identify McKinney-Vento students who recently lost their housing and were not previously identified. This kind of practice can be a key strategy to "remove barriers to the identification of homeless children and youths." 42 U.S.C. §11432(g)(1)(I).

- 6. Can a school share students' names and addresses with staff that are sending gift cards to the family or contacting the family to give food baskets?**

Yes. In this case, the staff who are sending the gift cards or contacting the families have a legitimate educational interest in the information. They need it to do their job.

Education records can be released to “other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.” 34 C.F.R. §99.31(a)(1)(i). The staff members do not need to know the students are homeless. However, if only McKinney-Vento students are receiving these resources, the staff will know the students are homeless. That is acceptable, due to the legitimate educational interest.

Sharing with Community Agencies

- 1. As a nonprofit organization, we provide tutoring/educational advocacy for students experiencing homelessness. Our state Department of Education’s guidance is that the school could share grades of the students we serve (we work within the school, during the school day) with us, without parental consent. Would you say the same?**

A student’s grades are part of the student’s education record and typically require parental consent to be disclosed. The district might have a standard form to enroll students in your tutoring and advocacy services, and that form might include a statement that the student’s grades, and any other relevant information, will be released to your tutors. That would be a streamlined way to inform parents of the release and obtain their consent. In addition, depending on the ages of the students you work with, the school may provide the students access to their own records, even though the student is under age 18. (“The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.” 34 C.F.R. §99.5(b)) The student then could choose to share those records with your tutors and advocates. A solution like this may be important for unaccompanied homeless youth. The McKinney-Vento Act requires local educational agencies to “remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths.” 42 U.S.C. §11432(g)(1)(I). Tutoring and advocacy services may be important to keep the student in school, and it may be necessary for the tutors to know their students’ grades for tutoring to be effective.

- 2. If we have community partners that would like to pay for food or hotel stays for McKinney-Vento families or youth, what information can we share with those partners? Names of hotels where our families tend to stay? Student names?**

Since FERPA only controls disclosures of education records, telling a community partner where families experiencing homelessness tend to stay is not a FERPA violation. However, depending on the identity of the community partner, it could be a violation of the McKinney-Vento Act. The McKinney-Vento Act requires local educational agencies to “remove barriers to the identification of homeless children and youths, and the

enrollment and retention of homeless children and youths.” 42 U.S.C. §11432(g)(1)(I). If families or youth feel like the school has sent community agencies to find them in a threatening or intimidating manner, that would be a significant barrier to identification and retention in school. For example, if community agencies might threaten to contact child protective services or law enforcement based on the families’ living conditions, or based on an unaccompanied youth being on her own, it would not be appropriate to share families’ or youth’s location with that agency. The school must be sure the agency will not create barriers to the students remaining in school or damage the school’s relationship with the student or family. Hopefully, this will not be an issue with most community agencies.

Sharing the names and addresses of students experiencing homelessness with an outside agency requires parental consent (or consent of the student if age 18 or over), because information about a homeless student’s living situation is a protected education record. Consent can be electronic, via an email or text message. You also could share the agency’s contact information with the parent or student.

3. Some of our families need a wifi unit that the county has offered to loan us. Can I just give the families’ contact info to the county? What if we cannot reach a parent or student?

If you are providing names and addresses of many families who need wifi, both those experiencing homelessness and those with permanent housing, the release of that information could be considered a release of directory information. 34 C.F.R. §99.3. Since not all of the families are homeless, the list itself does not reveal any student’s homeless status. A school can release directory information without parental consent. 34 C.F.R. §99.37. However, if you are providing only names and addresses of McKinney-Vento students, and the county is aware that the students are experiencing homelessness, you must have parental consent (or consent of the student if age 18 or over), because information about a homeless student’s living situation is a protected education record. Consent can be electronic, via an email or text message. You also could share the agency’s contact information with the parent or student. If you cannot reach the parent or student with the contact information you have, then the county probably also will not be able to reach them with that same information. Giving that information to the county is unlikely to solve the problem.

4. During this time of COVID, families need weekend food. Can they give permission for their information to be shared with a church or organization to deliver food/supplies?

Yes. With parental consent (or consent of a student age 18 or older), the school can release names, addresses, and other contact information to community agencies to provide food, supplies, or any other kind of support.

5. What about a community partner with a Memorandum of Understanding coming into the school to meet with students and their agency providing by-name list information?

An outside agency that is not a school and is not covered by FERPA does not have to abide by FERPA. The agency may have its own information privacy rules, or may be covered by a different federal or state privacy law.

Unaccompanied Youth

1. Can a liaison “verify” that a youth is unaccompanied with the youth or must we “verify” with their parent or legal guardian or the person assuming responsibility for them?

The liaison can and should determine unaccompanied youth status based on conversations with the youth. It can be challenging to determine all the circumstances of an unaccompanied youth’s homelessness, as the student may be very hesitant to share the story, due to fears of child welfare environment or repercussions for the student, siblings, or parents. Parents also often refuse to share due to embarrassment, fear of repercussions, or fear of losing access to financial benefits the parent receives for the student. If conversations with the youth reveal that the youth meets the definition of homeless under the McKinney-Vento Act¹, and is not physically staying with a parent or guardian, then the youth is an unaccompanied homeless youth. Requiring additional verification from a parent or other party creates a barrier to identification, which violates the McKinney-Vento Act. 42 U.S.C. §11432(g)(1)(I).

¹“(2) The term ‘homeless children and youths’--
(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 103(a)(1)); and
(B) includes--
(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;
(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 103(a)(2)(C));
(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
(iv) migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless for the purposes of this subtitle because the children are living in circumstances described in clauses (i) through (iii).” 42 U.S.C. §11434a(2).

2. Does parental consent under FERPA apply when the student is unaccompanied and there is no parent available? Can we give rights to the unaccompanied youth?

Yes, the LEA can give FERPA rights to an unaccompanied youth, even if the youth is under age 18. (“The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.” 34 C.F.R. §99.5(b)) LEAs can 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. There is guidance on this point in questions 5 and 6 of this document: <https://www2.ed.gov/policy/gen/guid/fpco/pdf/ferpa-disaster-guidance.pdf>.

3. Does the local educational agency have to let a parent know if an 18-year-old unaccompanied homeless youth asks to have his home address changed in his student record?

No. Under FERPA, the parent’s rights transfer to the student when the student turns 18. 34 C.F.R. §99.5. At that point the student has the right to control disclosures of his education records as established by FERPA. Information about a homeless student’s living situation is a protected education record. 42 U.S.C. §11432(g)(3)(G). As such, his address is a protected education record. Therefore, the school should not release the youth’s new address to the parent, or even inform the parents of the change.

4. We have a student (under age 18) who left home due to extreme family conflict and is living with a sibling. The parents now are creating problems for the sibling. Do we still give the parent FERPA rights, but remove the sibling?

Absent court involvement limiting parental rights, parents retain FERPA rights until the student turns 18, even if the student is living elsewhere. In this situation, the sibling may also meet the definition of “parent,” as an “individual acting as a parent in the absence of a parent or a guardian.” 34 C.F.R. §99.3. If the parents do not specify whether the sibling can access education records, then the school can provide FERPA rights to both the parents and the sibling. If the parents tell the school they do not want the sibling to access education records, the school should honor that. However, the school can provide the student access to his own records, even though the student is under age 18. (“The Act and this part do not prevent educational agencies or institutions from giving students rights in addition to those given to parents.” 34 C.F.R. §99.5(b)) The student then could choose to share those records with his sibling. A solution like this may be important for an unaccompanied homeless youth. The McKinney-Vento Act requires local educational agencies to “remove barriers to the identification of homeless children and youths, and the enrollment and retention of homeless children and youths.” 42 U.S.C. §11432(g)(1)(I). The sibling’s support for the student’s education, and the school’s good faith in working with the student, could be essential to remove barriers to his retention in school.

- 5. I am a liaison, and with schools closed due to covid-19, I would like to bring my McKinney-Vento case notes from my office to my home. They are in binders, and I have a locked file cabinet where I can store them. Can I bring my McKinney-Vento case notes home? Can I be held liable the case notes are stolen from my home?**

A liaison can bring case notes home, for two reasons. First, case notes might not even be subject to FERPA. “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 any other person except a temporary substitute for the maker of the record” are specifically excluded from the definition of education records covered by FERPA. 34 C.F.R. §99.3. It sounds like these paper case notes may meet that exclusion.

However, even if the case notes are subject to FERPA, FERPA’s protections are triggered when there is a “disclosure of personally identifiable information from the student's education records.” 34 C.F.R. §99.30. In this scenario, staff who have the legal right to access the information, simply are accessing it in a different location. As long as personally identifiable information is not disclosed to others in the home (or out of the home) there is no FERPA issue. By taking adequate precautions to prevent disclosure, such as keeping the information locked up, accessing just one binder at a time, never leaving it unattended while others are around, etc., this is in line with FERPA at a time when schools are closed due to COVID-19.

It is very unlikely that the U.S. Department of Education would sanction a liaison or school who brought case notes home under these circumstances, and with reasonable care taken to keep the case notes safe, if the notes were stolen.

- 6. If a parent enrolled a student, but the student then left home to stay temporarily with a friend’s family due to the parent’s substance abuse, who can access the student’s records? Can I add the friend’s parent to the student’s contact list?**

Under FERPA, the definition of parent includes “an individual acting as a parent in the absence of a parent or a guardian.” 34 C.F.R. §99.3. The friend’s parent could meet that definition in this situation, and the school could treat that person as a parent. If the student’s actual parent intervenes and tells the school not to disclose education records to the friend’s parent, the school should follow the parent’s wishes. However, the school could continue to provide the student with access to his or her education records. In either case, the school definitely could add the friend’s parent to the student’s contact list, as that person is an important emergency contact for the student at this time.

Consent Generally

- 1. Can consent be verbal?**

No. Consent must be signed, dated, and in writing. However, electronic consent is acceptable. 34 C.F.R. §99.30.

2. What if a student has two natural parents, divorced, and also a legal guardian, whose rights have priority?

We have submitted this question to the Student Privacy Office at the US Department of Education for guidance, and received the following response: Nothing in FERPA determines or delineates between "who would have more rights". If both individuals meet the definition of parent, and neither have had their rights revoked under FERPA, they would both have rights." Based on this information, it appears the federal law does not answer the question, and the decision of whose rights to honor in the case of a disagreement would be at the LEA's discretion.

3. What if one parent enrolled the student, but another parent refuses to consent to the release of education records. Does that non-enrolling parent have the right to withhold consent?

Yes. "An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that 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 C.F.R. §99.4.

4. How does a school know if a parent's rights have been terminated?

A school would have to receive a court order showing that a parent's rights have been terminated. If the student is in foster care, the foster care/child welfare case worker could provide a copy of such an order. "An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that 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 C.F.R. §99.4.

Privacy Generally

1. How do we protect privacy when students are transported on specialized transportation afterschool (when school is in session)? Everyone at dismissal can see our McKinney-Vento students getting onto a van.

If it is common knowledge that the van is used to transport students experiencing homelessness, then you are effectively disclosing the students' homelessness by having them board the van at a public time and location. In addition, this practice appears to violate the McKinney-Vento Act's requirement that "local educational agencies ... adopt policies and practices to ensure that homeless children and youths are not stigmatized

or segregated on the basis of their status as homeless.” 42 U.S.C. §11432(g)(1)(J)(i). The school should try to integrate transportation or allow student to board special vans after the rest of the school buses and parent pick-ups have left the school.

2. Can a student under 18 who wants to change his/her name from Julie to John, do so without parent’s permission or against parent’s wishes?

This is not a FERPA issue, because it is not about accessing or disclosing student records. If the student is an unaccompanied youth under the McKinney-Vento Act, the school should follow the youth’s wishes. Ignoring the youth’s wishes would create a barrier to the youth’s retention in school, in violation of the McKinney-Vento Act. 42 U.S.C. §11432(g)(1)(I). There also are federal laws that protect transgender students’ rights, and we strongly encourage schools to support transgender and gender-questioning students. Many resources are available to help schools support transgender students, including:

- [Model School District Policy](#)
- [Transgender Students and School Bathrooms](#)
- [Supporting Transgender and Gender Diverse Students in Schools](#)

3. In the world of special education, parents have legal rights to sign students’ Individualized Education Programs (IEPs), consent for evaluations, and attend IEP meetings. How does FERPA interact with this right when students are 18 or older?

Student’s rights under the Individuals with Disabilities Education Act (IDEA) depend on state law. IDEA regulations state that a state *may* provide that when a student with a disability reaches the age of majority, as defined by the state, IDEA rights transfer to the student. 34 CFR §300.520(a). Therefore, you must consult your state law or your state educational agency for information about when IDEA rights transfer to students. It may be that there is no conflict between FERPA and IDEA in your state.

If your state provides parents with rights after students turn 18, then local educational agencies must comply both with IDEA and with FERPA. That means that an 18 year old student can access educational records and consent (or withhold consent) for disclosure. It also means the parent would be able to access special education records and information needed to participate in IEP meetings, even without the student’s consent. Certainly, students also should be invited to IEP meetings and accommodated so they can participate fully in the meeting, as well as invite another advocate to appear with them, if they wish.

Foster Care

1. What rights does a case manager with the Department of Child and Family Services have under FERPA?

The Uninterrupted Scholars Act defines how and under which circumstances personally identifiable information from education records can be disclosed to caseworkers or other representatives of state, local or tribal child welfare agencies. Guidance on this Act is available at

https://studentprivacy.ed.gov/sites/default/files/resource_document/file/uninterrupted-scholars-act-guidance.pdf. More information is available at https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol_32/april-2013/the-uninterrupted-scholars-act--what-advocates-should-know/.