

The Need to Improve Access to Education Records through FERPA for Child Welfare Agencies Caring for Children

Lack of timely access to education records prevents the child welfare agency from meeting requirements under federal law to support the educational stability and success of children in foster care.

- The Fostering Connections Act of 2008 requires that child welfare agencies work to improve the educational experiences and outcomes for children and youth in foster care. Federal law also requires child welfare agencies to maintain the education records of all children in care. However, the Family Education Rights and Privacy Act (FERPA) currently hinders child welfare agencies in their efforts to meet the educational needs of students in foster care.

State level leaders from around the country have identified FERPA concerns as a major obstacle to educational success for children in the child welfare system.

- FERPA implementation concerns were identified as a “top issue” for state leaders in education, child welfare and court systems who were brought to Washington, D.C. in November 2011 by the Children’s Bureau in the Department of Health and Human Services (HHS) and the Department of Education for *Child Welfare, Education and the Courts: A Collaboration to Strengthen Educational Success of Children and Youth in Foster Care*. Nearly every state team identified the need for improved data collection and information sharing and they are working to address barriers.
- Challenges created by FERPA were also raised at the National Listening Tour by the Congressional Caucus on Foster Youth which visited Los Angeles, California and Broward and Miami-Dade Counties in Florida earlier in 2012.
- Local and state collaborations that received discretionary grants from HHS have also identified data and information sharing concerns as a “top issue” for their grantee sites. HHS has hosted a call to outline the requirements and barriers of FERPA and this will be a discussion topic at the grantee in-person meeting in June 2012.
- Over the last six months, the Legal Center for Foster Care and Education has worked directly with states to help address FERPA challenges and barriers and support better information-sharing between child welfare and education agencies. These states include: California, Connecticut, District of Columbia, Florida, Iowa, Kansas, Nevada, New Jersey, Ohio, Pennsylvania, Texas, and Wisconsin.

Delays and confusion around access to children's educational records undermine educational success and opportunities for youth.

- Delays in accessing records hinder students directly: child welfare agencies make living and school placement decisions with incorrect or limited educational information; students are placed in inappropriate classes or schools because of missing records; students miss school for extended periods while they wait for records to transfer so that they can be enrolled. The following actual examples highlight some of the numerous challenges children in foster care face on a daily basis:
 - *When **Jasmine** was placed in care on an emergency basis, her mother's whereabouts were unknown and the child welfare agency caseworker was unable to obtain a FERPA consent from any parent. Without timely access to the child's education records, the caseworker could not evaluate whether it would be in Jasmine's best interest to remain in the same school as required under the Fostering Connections Act. Jasmine moved to the new school, which had entirely different graduation requirements, received no credits for her coursework from the prior school, and had to repeat some of the same classes. She fell a full year behind, and eventually dropped out of school.*
 - ***Sadie** was in third grade and her mother, who was incarcerated out-of-state, told the child welfare agency that Sadie had "special education needs." Lacking access to her education records, her caseworker had no way of assessing Sadie's specific educational needs. As a result, she placed Sadie with a foster family without being able to fully consider the programs or services Sadie needed. When Sadie's new foster mother received the records, she learned that Sadie has autism. By then, Sadie was unable to attend the program designed for her needs, because it was located too far from her foster family's home.*
 - ***Curtis**, a teenager in foster care, was no longer living with a foster parent. His parents' rights had been terminated, so they could not consent to the release of records. Because Curtis had moved between many on-site schools, no school had his complete educational records. Curtis' caseworker wanted to help the schools gather information on the courses Curtis had taken so he could graduate, but she couldn't do anything without his education records. Because there was no parent to consent, Curtis had to go through the court system to get the records. That process took over six months. This prevented Curtis from graduating on time.*

Have a question or want to share an example of FERPA causing barriers to education success for children in foster care? Please contact the Legal Center for Foster Care and Education at cleducation@americanbar.org.