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NYS FIELD MEMO
NCLB McKinney-Vento
02 – 2013

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To: District Superintendents
Superintendents of Public Schools
Charter School LEA Administrators
Homeless Education Liaisons

From: Roberto Reyes 

Re: Amendments to FERPA affecting students in foster care

The purpose of this guidance is to provide information to local educational agencies (school districts, BOCES, and charter schools) about important changes to the Family Educational Rights and Privacy Act (FERPA) that make it easier for child welfare agencies and voluntary agencies working with them to access the educational records of foster children in order to address students' educational needs.

Child welfare agencies that provide foster care or case management services to foster children need information about a child's educational history so as to make well-informed recommendations about a child's educational services. Federal law requires child welfare agencies to make educational best interest determinations for children in their care and protection. This determination includes decision-making about whether a child should stay in the same school or transfer to another school at the time of placement outside of the home and all subsequent changes in foster care placement. The agencies must take into consideration any educational supports, including special education services the child receives, along with various other factors affecting a child's safety and well-being. Furthermore, child welfare agencies are obligated under federal law to include a child's educational information in each child's case plan.

In January 2013, the Family Educational Rights and Privacy Act was amended by the Uninterrupted Scholars Act to expressly codify the right of child welfare agencies and their representatives to access educational records for students in the care and protection of child welfare agencies. 20 U.S.C. Section 1232g (b)(1)(L). In New York State, child welfare agencies include:

- the New York State Office of Children and Family Services (OCFS),
- local departments of social services (LDSS) and

- voluntary agencies that have access to the child's case plan in order to provide residential care or case management services for a child on behalf of OCFS or an LDSS.

These agencies may receive educational records for students in their care and protection from a local educational agency (LEA) without the need for prior parental consent. This includes students in the care and custody of the child welfare agency (i.e., where parental rights have not been terminated) or custody and guardianship of the child welfare agency (i.e., where parental rights have been terminated or surrendered) as a result of abuse and neglect, voluntary placement, Persons in Need of Supervision, Juvenile Delinquency or termination of parental rights proceedings.

Before releasing any educational records, the LEA should obtain a letter from the child welfare agency on letterhead verifying the basis for obtaining the student's educational records.

Records may only be released to, and the information contained in the records may only be reviewed by individuals who have the right to access the child's case plan including:

- The child's caseworker from OCFS or the LDSS having custody or guardianship of the child;
- The child's caseworker from the voluntary agency where the child is placed or that is providing case management services on behalf of OCFS or the LDSS;
- The child welfare supervisors from OCFS, the LDSS or the voluntary agency; and
- Any other individual from OCFS, the LDSS or the voluntary agency who has access to the child's case plan (e.g. individual charged with coordination of education services for the child).

Child welfare agencies that access educational records must take measures to protect the security and confidentiality of the child's educational records and may redisclose the records only as authorized by state and federal law.

In practice this means that, upon request, schools should disclose information, such as report cards, attendance information, special education records (including IEPs), and disciplinary records of children in the care and protection of child welfare agencies to representatives of OCFS, the local department of social services with custody of the child, and to voluntary agencies providing case management or residential care services to a foster child or a child in the custody of OCFS or an LDSS. Notification and consent from the parent are not required in these circumstances.

In addition, the amendments no longer require that LEAs provide prior notice to parents or students where the LEA is being requested to disclose the educational records pursuant to a subpoena or judicial order as a part of an abuse or neglect proceeding in which the student's parent is a party. 20 U.S.C. Section 1232g(b)(2)(B).

For other important information about the education of students in foster care, please see guidance about educational stability from the State Education Department and the Office of Children and Family Services available at:

http://nysteachs.org/media/INF_SED_EdStabilityGuidance2012.pdf .

cc: Lisa Gharthey Ogundimu, Esq.
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