



Privacy Technical
Assistance Center



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South Dakota LEAs Data Sharing Under FERPA

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Session Objectives

- Cover some exceptions to FERPA's consent requirement
- Provide examples of allowable FERPA data sharing with nonprofits
- Discuss some common scenarios around contracted IT vendors
- Uninterrupted Scholars Act – Sharing information about foster children



What are the Exceptions to the Consent Requirement?

Some of the FERPA 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
- **Studies, Audits, or Evaluations**
- **Directory information**
- Health and safety emergencies



School Official Exception

Schools or LEAs can use the School Official exception under FERPA to disclose education records to a third party only if the outside party:

- Performs a service/function for the school/district for which the educational organization would otherwise use its own employees.
- Is under the direct control of the organization with regard to the use/maintenance of the education records.



School Official Exception (cont'd)

- Uses education data in a manner consistent with the definition of the “school official with a legitimate educational interest,” specified in the school/LEA’s annual notification of rights under FERPA.
- Does not re-disclose or use education data for unauthorized purposes.



Studies Exception

- Data can be disclosed to a third party to perform a study only when:
 - being done for or on behalf of the school or LEA;
 - using a written agreement; and
 - for the specific purposes of
 - Improving instruction
 - Administering a student aid program
 - Developing, validating, or administering a predictive test



Audit/Evaluation

- Data can only be shared in order to
 - Audit or evaluate a Federal- or State-supported **education** program, or
 - Enforce or comply with Federal legal requirements that relate to those education programs.
- Education program – broad, but not limitless.



Written Agreements: Audit/Evaluation Exception

- Written agreements **must**
 - Designate an authorized representative.
 - Specify what PII will be disclosed and for what purpose.
 - Under the Audit/Evaluation exception, the purpose of data sharing can only be to carry out an audit or evaluation of Federal- or State-supported education programs, or to enforce or to comply with Federal legal requirements that relate to those programs
 - Describe the activity to clarify that it falls under the Audit/Evaluation exception.



Written Agreements: Audit/Evaluation Exception

- Written agreements **must**
 - Require an authorized representative to destroy PII upon completion of the evaluation and specify the time period in which the information must be destroyed.
 - Establish policies and procedures, consistent with FERPA and other Federal and State confidentiality and privacy laws, to protect PII from further disclosure and unauthorized use.



Other data sharing updates

What about sharing with non-profit organizations and IT vendors?



Key Points to Remember

- Properly de-identified data can be shared without any FERPA considerations and should be your **FIRST** option as it limits the risk of unauthorized PII disclosure.
- In ***most*** cases, consent is the best approach for sharing PII with non-profit organizations.
- Directory Information is often misunderstood. Opt-out provisions do not prevent data from being shared under the Audit/Evaluation or School Official exceptions.



Non-Profit Scenario

South Mason County School District (LEA) wishes to enter into an agreement with a coalition of outside non-profit organizations that are running various afterschool programs in the community. The LEA would like to view these coalition members as its “agents” in continuing its education program and wishes to create an agency relationship that would allow the programs to have PII from education records.

Q: Would FERPA permit the LEA to enter into an agreement with the coalition members for purposes of disclosing PII from education records of the students who participate in one or more of the afterschool programs?



Answer to Non-Profit Scenario

- No.
 - Generally, FERPA requires written consent before PII from students' education records may be disclosed to organizations running afterschool programs.
 - “School Official” exception: Because these organizations are not performing a service or function for which the LEA would otherwise use its employees, this would not apply.
 - FERPA would permit the LEA to disclose properly designated directory information on those students whose parents have not opted out of the disclosure of their directory information, in compliance with the school's or school district's directory information policy.
 - Best Practice: Build consent into the program enrollment process to permit data sharing and increase transparency.



Frequently Asked Question #1

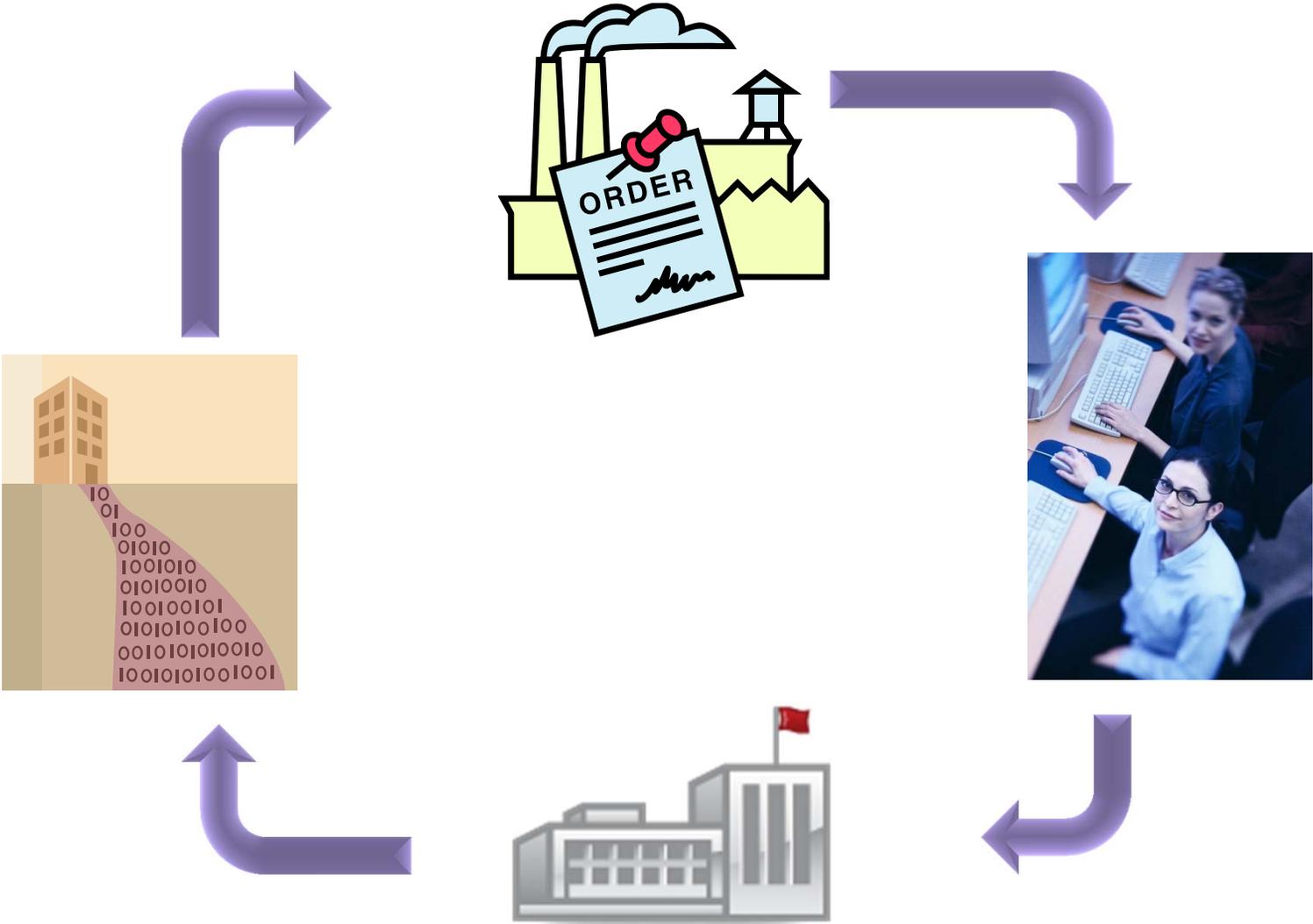
Q: If we go the consent route for sharing data with a non-profit, can the non-profit or the SEA get the consent from the parents?



*A: FERPA does not address **where** the consent comes from, so yes, the non-profit or SEA can obtain the consent. Remember, even with consent the school/agency is not required to provide the information.*



Contracting IT Services



Remember: Use the Appropriate FERPA Exception

Schools/LEAs: IT contractors must meet criteria under the School Official exception discussed earlier.

SEAs: Cannot use the School Official exception; therefore, must designate IT service providers as “authorized representatives” under the Audit/Evaluation exception.



What about Cloud Services?



- FERPA allows the use of cloud services, but the arrangement must meet the School Official exception requirements:
 - Service/function that school/district would otherwise use its employees to perform, direct control over the provider's data use, & data use consistency with annual notification, incl. legitimate educational interest requirement.
- Best practices: See [FAQ on Cloud Computing](#) from PTAC/ED



FAQ: Ownership of Data

Q: When schools share data with a 3rd party IT provider, who “owns” the data?

A: Schools/districts are always responsible for the data, even when they share it!



The IT provider must comply with both FERPA and the terms of the contract. The provider never “owns” the data, and can only act at the direction of the school.

Other terms depend on the specific agreement between the school and the provider.



FAQ: 3rd Party Use of Anonymized/De-identified Data

Q: Can cloud providers keep and use anonymized or de-identified student data for other purposes?

A: It depends on how and why the data were de-identified.



SEA-Provided IT Systems

Q: Can SEAs offer centralized IT services (such as student information systems) to the LEAs in their state?

A: Yes, but the same FERPA requirements would apply to the SEA as if it were any other IT provider (direct control, authorized use, etc.)



Discussion: 3rd Party Use of Data

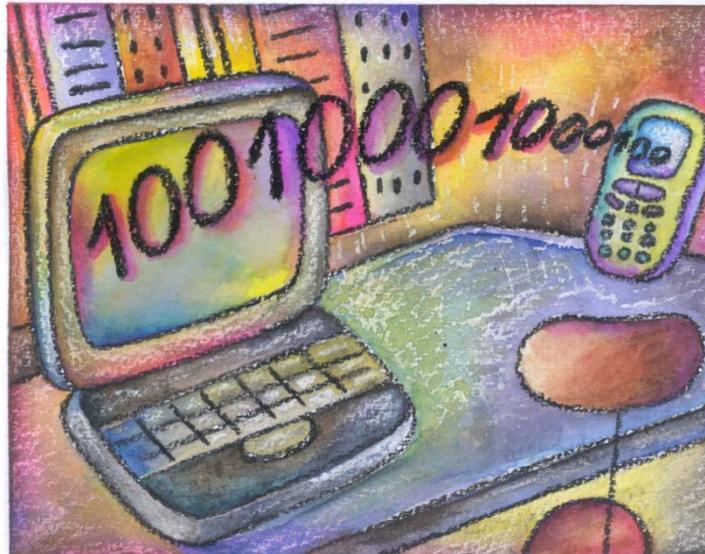
Q: What are cloud providers (or other 3rd party providers) allowed to do with student data?

A: IT providers can only use student data at the direction of the school or district, and in accordance with FERPA and the terms of their contract or written agreement.



Discussion: Teacher Use of Free Services & “Apps”

Q: Can teachers elect to use free services and apps in their classes?



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

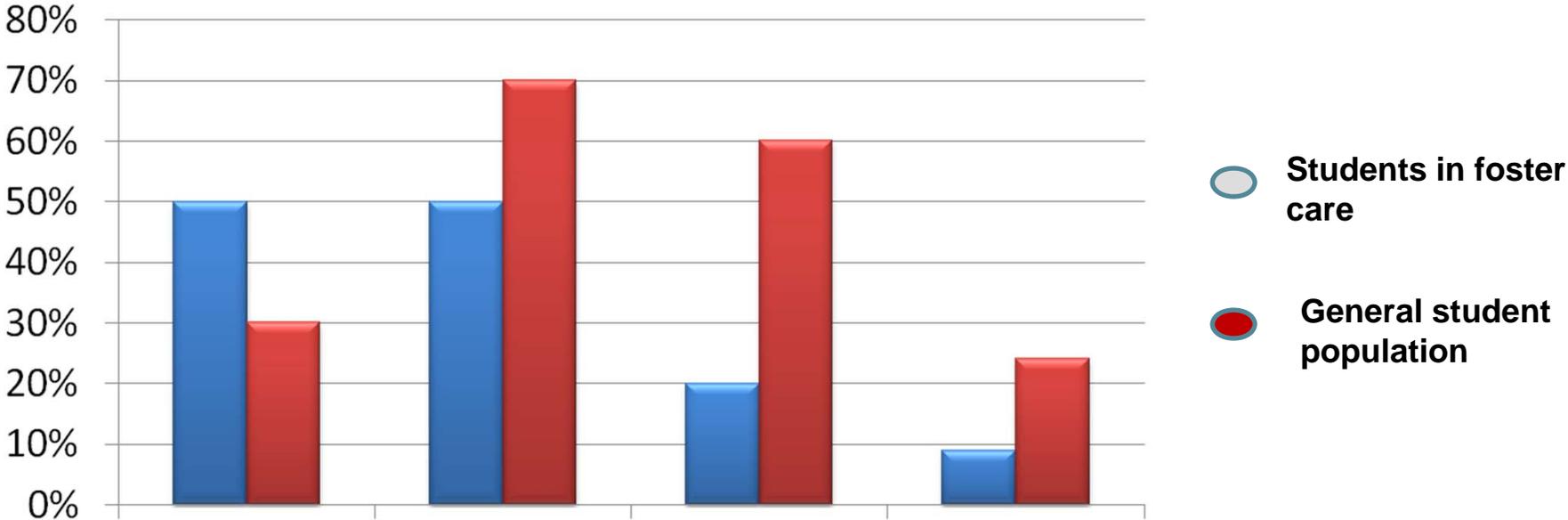


Why? High Rates of School Mobility

- **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*



Foster Care Alumni Studies: Education Outcomes



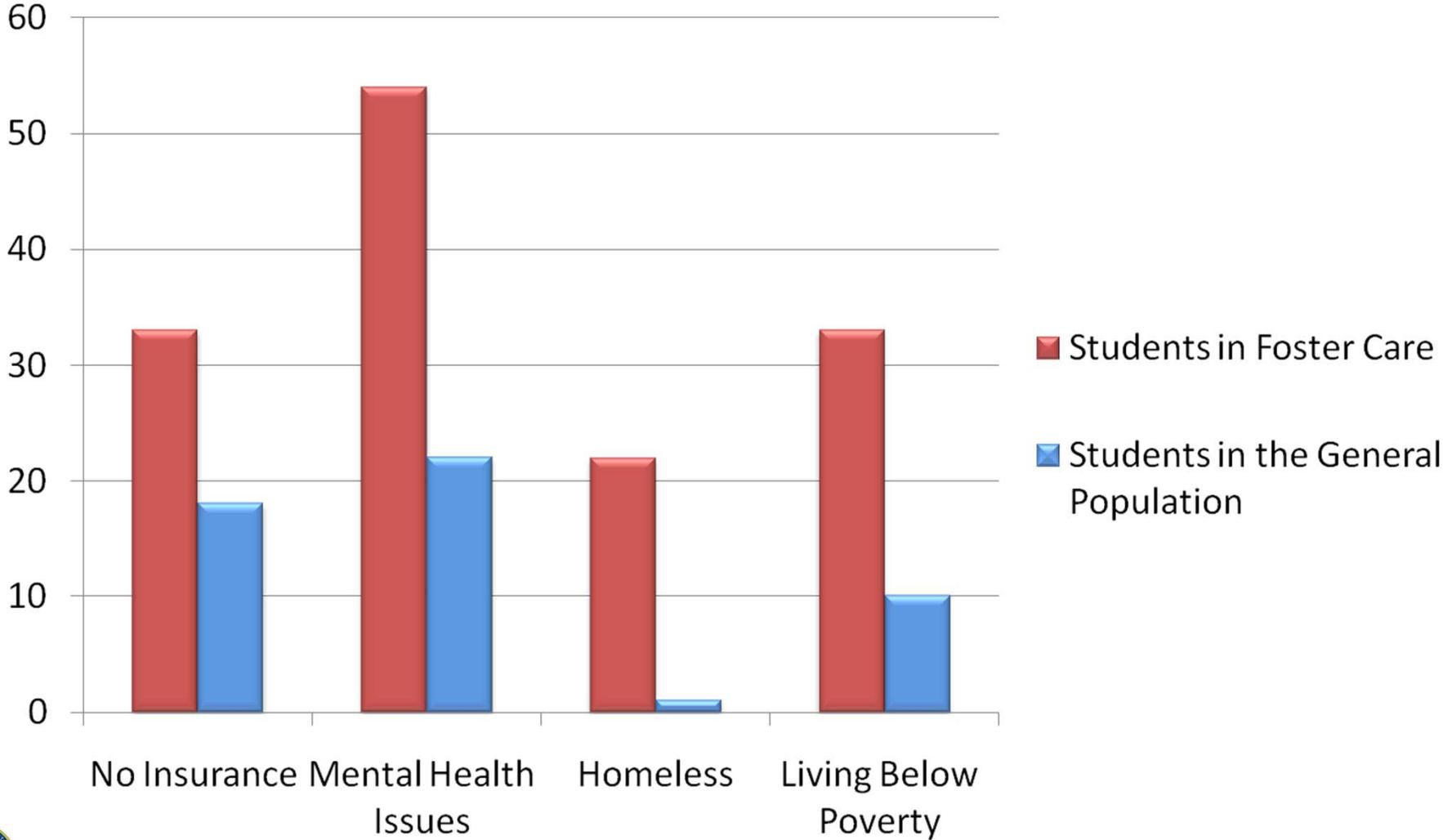
70% of former foster youth express a desire to attend college



*www.cwla.org

^ Casey Northwest Alumni Study

Adult Outcomes



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 their school of origin despite the foster care placement.



Educational Stability Plan

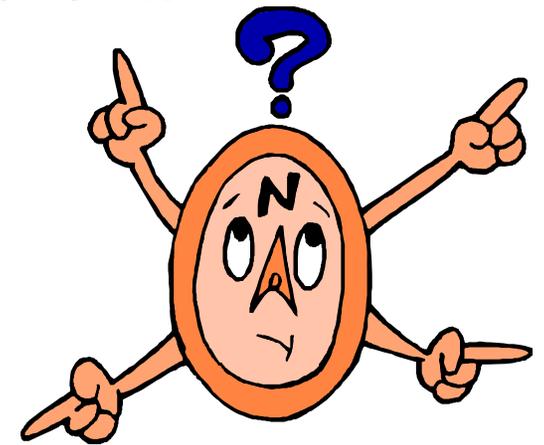
- However, if the child welfare agency determines it isn't in the child's best interests to stay in the same school, the agency must ensure that
 - the child is immediately enrolled in a new school, and
 - all the child's education records are provided to that new school.



Before the Uninterrupted Scholars Act

Some schools and LEAs were sharing education records with CWAs 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 the school or district is sharing information for other purposes, they 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 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

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 Six



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?



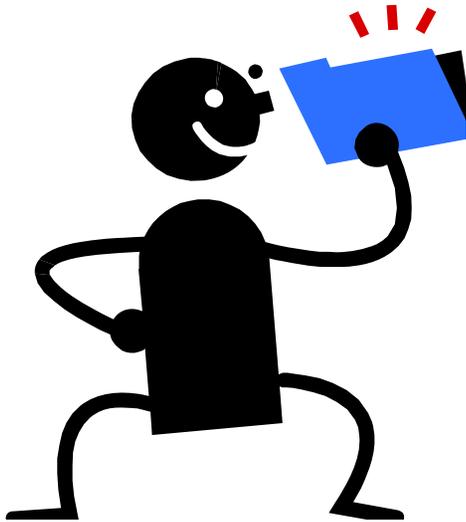
Scenario Seven

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



Scenario Eight

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



Scenario Nine

The appropriate CWA representative asks to receive education records for children whom it is helping with in-home services (children who are not in foster care).

Does the Uninterrupted Scholars Act allow the school to turn over these records?





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