



PRIVACY, **FERPA**, AND STUDENT HOMELESSNESS



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INTRODUCTION

PRIVACY, FERPA, AND STUDENT HOMELESSNESS

The educational success of students experiencing homelessness requires collaboration. Efforts to collaborate, however, must be sensitive both to students' privacy rights—rights protected by the Family Educational Rights and Privacy Act (FERPA)—and to assuring that sharing information about students experiencing homelessness does not create a barrier to their identification, enrollment, or retention in school. This issue brief explains what educational information pertaining to homeless students can be shared, with whom, and under what circumstances, consistent with FERPA and the McKinney-Vento Act.



[CLICK HERE FOR A MORE CONCISE FACT SHEET.](#)

#1 FERPA PROTECTS THE PRIVACY OF STUDENT EDUCATION RECORDS.

- “Education records” means records that are directly related to a student and “maintained by an educational agency or institution.”[i]
- A separate federal law, called the [Protection of Pupil Rights Amendment](#), contains additional restrictions on public schools administering surveys to students.

#2 FERPA ALWAYS MUST BE INTERPRETED IN LIGHT OF THE MCKINNEY-VENTO ACT WHEN CONSIDERING PRIVACY FOR STUDENTS EXPERIENCING HOMELESSNESS.

Schools must remove barriers to identification, enrollment, and retention of McKinney-Vento students.[ii] If students and families believe that information about their homelessness will be shared widely with school staff or outside agencies, they may avoid disclosing their homelessness. This would create a barrier to identification and enrollment. Therefore, the McKinney-Vento Act requires heightened protection of information about homelessness. *When in doubt, do not share.*

#3 INFORMATION ABOUT A MCKINNEY-VENTO STUDENT'S LIVING SITUATION IS FULLY PROTECTED AS AN EDUCATION RECORD UNDER FERPA. [iii]

Disclosing students’ homelessness makes their personal information public and can expose them to stigma.

- Disclosing students’ homelessness also can put their safety at risk, particularly in situations of domestic violence.
- Although FERPA requires schools to give full rights to both parents, that rule will be superseded by a court order, state statute, or legally binding divorce, separation or custody document that revokes FERPA rights.[iv]



BEST PRACTICES TO KEEP CHILDREN AND FAMILIES SAFE:

- When providing professional development to teachers, secretaries, administrators, counselors, bus drivers, security guards, and others, model sensitivity toward survivors of domestic violence and explain the legal requirements of the McKinney-Vento Act and FERPA.
- Ensure that parents understand that, without a court order or restraining order, both parents will be able to access school records. Identify agencies in your community that help domestic violence survivors obtain restraining or civil protection orders, and refer survivors to those agencies. Make sure school and district staff know about the order.
- Ensure that all school personnel who might be contacted by an abuser are informed about the importance of confidentiality. For instance, school personnel should not provide information from education records over the phone. Because it is not possible to verify the caller's identity or right to access the records, schools should require the parent to come to the school or district office to present photo identification and review the records.
- To help prevent abusers from determining the school that a student is attending after transferring schools, transfer school records through the state attorney general's office or the Office of the State Homeless Education Coordinator. Alternatively, schools can set up a "shadow school," using a staff member's office as the child's school address, so that all information will pass through that individual.
- Work with local domestic violence shelters and other community providers on strategies and procedures to protect survivors of domestic violence.
- When appropriate, suggest the possibility of enrolling students under generic or assumed names to further protect their privacy and provide for their safety.



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- Schools may not disclose information about a student’s homelessness to landlords, public housing agencies, or law enforcement. This prohibition against disclosure includes information indicating that students may be staying with other people in violation of lease terms or occupancy limits.

“By-Name” Lists [v] of students experiencing homelessness cannot be shared with any outside agencies without signed, dated consent from each parent (or student age 18 or older). The consent must specify exactly what information will be shared, with whom, and for what specific purpose.[vi] The agency receiving the information must ensure the information is shared only with the individual specified on the consent form, and only for the specific purpose described on the consent form.



Before requesting permission to share By-Name Lists of McKinney-Vento students, schools must carefully consider whether such sharing benefits students and families and is compliant with FERPA and the McKinney-Vento Act. The mere act of requesting permission to share such information may create a barrier to the identification, enrollment, and retention of McKinney-Vento students, because such a request may lead families and students to hide their homelessness from the school. In addition, the sharing of such lists could result in stigma and other negative consequences. In SchoolHouse Connection’s experience, the potential benefits of such disclosure for the student or family often are questionable, and do not justify asking students or families to compromise their privacy in this way.

- Schools can disclose education records only on the condition that the party receiving the information will not share the information with anyone else, unless they get a separate, specific consent from the parent or student age 18 or older. For example, if a school receives consent from a parent to share information about a student’s homelessness with a particular individual at a community agency, that individual cannot enter the information into a data system that other agencies or individuals can access, or otherwise share the information with other organizations or individuals. Also, the information can be used only for the explicit purpose outlined in the consent form. Schools must make sure that parties receiving education records understand their limits in re-sharing the information.[vii]

#4 UNDER FERPA, “PRIVACY” GENERALLY MEANS THAT SCHOOLS MUST HAVE SPECIFIC, WRITTEN (SIGNED AND DATED) CONSENT TO RELEASE ANY INFORMATION FROM A STUDENT'S EDUCATION RECORD.[VIII]

- Interagency agreements or MOUs cannot supersede FERPA’s consent requirements.
- There are 16 exceptions to the requirement for written consent to release records, including:
 - Releasing records in connection with financial aid for which the student has applied or which the student has received, if “the information is necessary for such purposes as to” determine eligibility for the aid, the amount of the aid, or the terms and conditions of the aid.[ix]
 - This includes a letter or other record verifying that a student is an unaccompanied homeless youth for the purpose of completing the Free Application for Federal Student Aid (FAFSA).
 - This also includes a letter or other record about a student’s homelessness as part of a scholarship application.
 - Releasing records to officials of another school, school system, or institution of post-secondary education where the student seeks to enroll or already has enrolled.[x]
 - Releasing records to the U.S. Departments of Education or Justice, or to state or local education authorities, for audits, evaluations, or enforcement.[xi]
 - Releasing records to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.[xii]
 - Releasing “directory information” (information not generally considered harmful or an invasion of privacy if disclosed), such as name, address, telephone, email, date and place of birth, major field of study, dates of attendance, grade level, participation in extracurriculars, honors and awards.
 - Directory information does not include information that could indicate a student’s homelessness, including the student’s address. Any and all information indicating a student’s homelessness is protected by FERPA.[xiii]
 - Directory information does not include a student’s social security number or student identification number.[xiv]

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- While FERPA indicates that directory information can be disclosed without consent,[xv] the school must (1) explain to parents and students age 18 or older what “directory information” includes, and that such information can be released, and (2) give parents and students age 18 or older the opportunity to opt out of the release of directory information.[xvi]



BEST PRACTICE TO PROTECT PRIVACY:

Offer McKinney-Vento parents, students age 18 or older, and unaccompanied youth the opportunity to opt out of the release of directory information. Explain what directory information is, and the pros and cons of opting out of the release as a way to protect their privacy.

#5 SCHOOLS CAN SHARE EDUCATION RECORDS, INCLUDING A STUDENT’S HOMELESSNESS, WITH OTHER SCHOOL OFFICIALS WITHIN THE LOCAL EDUCATIONAL AGENCY OR SCHOOL WHO HAVE A “LEGITIMATE EDUCATIONAL INTEREST” IN THE INFORMATION, INCLUDING TEACHERS.

- 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.[xvii] To ensure schools are not erecting a barrier to identification or increasing the likelihood of stigma for students experiencing homelessness, schools should interpret “legitimate educational interest” narrowly, and avoid broad, categorical sharing of homeless information school- or district-wide. For example, teachers may benefit from knowing which of their students are currently McKinney-Vento eligible, so they can respond appropriately to attendance or behavior issues, incomplete assignments, and other needs; but teachers generally do not need to know the specifics of a student’s situation, or homelessness of students not in their classes.



BEST PRACTICE TO PROTECT PRIVACY:

- Ask parents/students for their permission prior to sharing homelessness information with teachers or other school staff. Make sure parents and students know who at school will be told of their McKinney-Vento eligibility.
- Train teachers to employ trauma-informed strategies with all students. Research shows that schools generally are not able to identify all their students who are experiencing homelessness—meaning most teachers have homeless students of whom the school is not aware.
- Ensure that McKinney-Vento eligibility markers in online student databases are visible only to a limited, core group of school staff who need to know. This may include an administrator, school counselor, school social worker, and teachers (for their students).
- Provide access to details about a student’s homelessness only to specific school staff who truly need that information, such as a school building homeless liaisons or social workers.
- If a need to discuss student concerns arises, provide support without disclosing housing status by using sensitive language: “This student has a number of challenges outside of school right now.”

#6 IT IS IMPORTANT FOR UNACCOMPANIED HOMELESS YOUTH TO BE ABLE TO ACCESS AND DISCLOSE THEIR OWN RECORDS.

- Schools may give FERPA rights to unaccompanied youth under age 18, although this cannot supersede the rights of their parents.[xviii]
- Many schools are unaware that they have the authority to allow unaccompanied youth to exercise rights under FERPA. Providing unaccompanied youth access to their own records is an important strategy to remove barriers to enrollment and retention and can help pave the way toward graduation. For example, unaccompanied youth can choose to share records with outside tutors, mentors, attorneys assisting in legal matters, or others as a way to support their academic progress and meet their basic needs.

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- Some unaccompanied homeless youth have adults in their lives who are “acting as a parent in the absence of a parent or a guardian.” Those adults meet the definition of “parent” under FERPA. That can include McKinney-Vento liaisons, if they are “acting as a parent” for a youth.
 - Note that if a natural parent or legal guardian is present and attempting to exercise FERPA rights, their rights trump those of caregivers who are “acting as a parent.”
 - Once students turn 18 years old or attend a school beyond the high school level, all FERPA rights transfer to them.[xix]



BEST PRACTICE FOR UNACCOMPANIED YOUTH:

Create a form to share the names of unaccompanied homeless youth who need to be able to sign themselves out of school when they are sick, have a doctor’s appointment, etc. This enables unaccompanied youth to participate fully in school, as is their right under the McKinney-Vento Act.[xx] Share the form only with staff who need the information to release students, such as administrators or secretaries.



ADDITIONAL FERPA RESOURCES:

- [U.S. Department of Education Family Policy Compliance Office](#)
- [NCHE FERPA resources](#)
- [FERPA and the Disclosure of Student Information Related to Emergencies and Disasters](#)

ENDNOTES

- [i] 34 CFR §99.30.
- [ii] 42 USC §11432(g)(1)(I).
- [iii] 42 USC §11432(g)(3)(G).
- [iv] 34 CFR §99.4.
- [v] A By-Name List is a list of people experiencing homelessness that may include the person's name, demographics, history, and housing needs.
- [vi] 34 CFR §99.30.
- [vii] 34 CFR §99.33.
- [viii] 34 CFR §99.30.
- [ix] 34 CFR §99.31(a)(4).
- [x] 34 CFR §99.34.
- [xi] 34 CFR §99.35.
- [xii] 34 CFR §99.31.
- [xiii] 42 USC §11432(g)(3)(G).
- [xiv] 34 CFR §99.3.
- [xv] 34 CFR §99.31(a)(11).
- [xvi] 34 CFR §99.37.
- [xvii] 34 CFR §99.31(a)(1).
- [xviii] 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*.
- [xix] 34 CFR §§99.3; 99.5.
- [xx] 42 USC §11432(g)(1)(I).