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*Governor*

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*Commissioner*

## Informational Letter

<b>Transmittal:</b>	13-OCFS-INF-06
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies OCFS Facility Directors
<b>Issuing Division/Office:</b>	Division of Child Welfare and Community Services Office of Strategic Planning and Policy Development
<b>Date:</b>	October 30, 2013
<b>Subject:</b>	<b>Family Educational Rights and Privacy Act (FERPA) Update: The Uninterrupted Scholars Act</b>
<b>Suggested Distribution:</b>	Directors of Social Services Child Welfare Supervisors Education Liaisons Education Coordinators and Directors
<b>Contact Person(s):</b>	See Page 4 for Contact Information
<b>Attachments:</b>	No
<b>Attachments Available Online:</b>	N/A

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
12-OCFS-ADM-03 12-OCFS-INF-04		18NYCRR 430.11(c)(1)(i) 18NYCRR 430.12(c)(4)	§106 of the Children and Family Services Improvement and Innovation Act (P.L. 112-34); §204 of the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351); Education Law §3202(4); Family Educational Rights and Privacy Act (FERPA) 20 U.S.C. §1232g, et seq.		ACYF-CB-PI-10-11 (July 9, 2010)

## **I. Purpose**

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

## **II. Background**

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. OCFS previously informed child welfare staff about these requirements in 12-OCFS-ADM-03, New Requirement Regarding Educational Stability of Foster Children, and 12-OCFS-INF-04, Educational Stability of Foster Children: OCFS, State Education Department and NYS Uniform Court System Field Guidance.

In January 2013, the [Family Educational Rights and Privacy Act](#) was amended by the Uninterrupted Scholars Act [20 U.S.C. Section 1232g (b)(1)(L)] to expressly codify the right of child welfare agencies to access educational records for students in the care and protection of child welfare agencies. It should be noted that this law does not apply to children who remain in the custody of their parents or relative. For the purposes of this Informational Letter, the term "child welfare agencies" may include any of the following entities that have access to the child's case record:

- The New York State Office of Children and Family Services (OCFS)
- Local departments of social services (LDSS)
- 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 who, as a result of abuse and neglect, voluntary placement, being Persons in Need of Supervision, juvenile delinquency or termination of parental rights proceedings, are in the care and custody of the child welfare agency (i.e., where parental rights have not been terminated) or are in the custody and guardianship of the child welfare agency (i.e., where parental rights have been terminated or surrendered).

### III. Program Implications

In order to obtain any educational records, the child welfare agency should send a letter to the LEA on the child welfare agency's 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 that has 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;
- 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. an 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 re-disclose the records only as authorized by state and federal law.

In practice the above 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, to 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 child in OCFS custody. Notification and consent from the parent are not required in these circumstances.

In addition, the amended FERPA [see 20 U.S.C. Section 1232g(b)(2)(B)] no longer requires that LEAs provide prior notice to parents or students where the LEA receives a request to disclose 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.

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](http://nysteachs.org/media/INF_SED_EdStabilityGuidance2012.pdf) .

An additional resource providing information regarding the education records of children in foster care can be found at:

<http://childwelfaresparc.org/wp-content/uploads/2013/10/SPARC-Education-Records-of-Children-in-Foster-Care.pdf>.

**Contact Information**

For more information about the education provisions of the Fostering Connections to Success and Increasing Adoptions Act, including the changes introduced by the Uninterrupted Scholars Act, please contact:

- Lisa Ghartey Ogundimu, Assistant Commissioner, Special Populations; Office of Children and Family Services; (518) 473-9447, [Lisa.GharteyOgundimu@ocfs.ny.gov](mailto:Lisa.GharteyOgundimu@ocfs.ny.gov);
- Betsy Stevens, Associate Counsel, Legal Division; Office of Children and Family Services; (518) 473-1282, [betsy.stevens@ocfs.ny.gov](mailto:betsy.stevens@ocfs.ny.gov)

Questions can also be directed to the appropriate Regional Office, Division of Child Welfare and Community Services (CWCS):

BRO - Dana Whitcomb (716) 847-3145; [Dana.Whitcomb@ocfs.ny.gov](mailto:Dana.Whitcomb@ocfs.ny.gov)

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*/s/ Laura M. Velez*

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