

Answers to Category Two Scenarios

Note: The answers to these case scenarios are based solely on federal law. Readers should also apply relevant state laws where appropriate.

Scenario 1: State Youth Services Department and Local School District

Law referenced in this answer: FERPA

The state youth services department would like to gather, in the aggregate, detailed attendance and truancy data from the local school district. The goal of gathering this information is to share it with local probation departments and police departments (specifically School Resource Officers) in an effort to create programming at the local level that would reduce truancy and increase attendance in local school districts.

Who has the information?

Local school district.

Who wants the information?

State youth services department

What specific information does the requester want?

Aggregate attendance and truancy data.

What does the requester want to do with the information?

Share it with local probation departments and police departments (specifically School Resource Officers) in an effort to create programming at the local level that would reduce truancy and increase attendance in local school districts.

What does the law permit?

Under the FERPA regulations, “disclosure” means “to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records to any party, by any means, including oral, written, or electronic means.” 34 CFR § 99.3. According to the regulations “personally identifiable information” includes, but is not limited to:

- (a)** The student's name;
- (b)** The name of the student's parent or other family members;
- (c)** The address of the student or student's family;
- (d)** A personal identifier, such as the student's social security number, student number, or biometric record;

- (e) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name;
- (f) Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or
- (g) Information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates. 34 CFR § 99.3.

Disclosure of such personally identifiable information requires written parental consent. However, de-identified student-level information from education records may be shared without consent. De-identification involves removing or obscuring all identifiable information until all data that can lead to individual identification have been expunged or masked. In order to ensure that data has been truly de-identified, one must consider the cumulative re-identification risk from all previous data releases and other publicly available information.

Once data are de-identified, they can be released as aggregated data that can help direct programming and policy to meet identified goals.

Scenario 2: State Child Welfare Agency, State Education Agency, and Local Education Agency

Law(s) referenced in this answer: FERPA and the IDEIA

The state child welfare agency wishes to include education information about foster children in the statewide child welfare database. Specifically, the agency wants the state education agency and/or local education agency to supply the following information for the database: enrollment and attendance information, disciplinary action (suspensions), grades, testing scores (e.g. math and reading scores), special education status, English as second language status, and graduation information. The child welfare agency wants to make the information in the database available to front line child welfare caseworkers so that they can track the progress and needs of children on their caseloads. The agency also wants to analyze the collected information to track the overall academic success of foster children and identify what factors impact success for different children.

Who has the information?

State education agency and/or local education agency.

Who wants the information?

The state child welfare agency.

What specific information does the requester want?

The state child welfare agency seeks the following information about foster children in the statewide child welfare database:

- enrollment and attendance information
- disciplinary action (suspensions)
- grades
- testing (e.g. math and reading scores)
- special education status
- English as second language status
- graduation information.

What does the requester want to do with the information?

The state child welfare agency wants to: (1) make the information in the database available to front line child welfare caseworkers so that they can track the progress and needs of children on their caseloads; and (2) analyze the collected information to track the overall academic success of foster children and identify what factors impact success for different children.

Which laws pertain?

FERPA and the IDEIA (with respect to special education records).

What does the law permit?With respect to purpose #1 – individual case monitoring

The Uninterrupted Scholars Act (USA) which amended FERPA allows child welfare agencies to obtain records for youth in their care under certain circumstances. Pursuant to the USA, a school may release a child's education records to a state, local or tribal welfare agency when the agency is "legally responsible for the child's care and protection." The records may be specifically disclosed to an agency representative who has the right to access the child's case plan. The recipient of the education records can only re-disclose the records to another individual or agency engaged in addressing the child's education needs if the child welfare agency authorizes such re-disclosure.

Thus, under the USA the state and/or local education agency may disclose the requested information about an individual child to the state child welfare agency if the agency is legally responsible for the child's care and protection. (Note that the child would have to be currently under the agency's care and protection; the USA would not

allow the school to disclose education records about former foster children in the child welfare database who are no longer under the agency's care and protection.) However, the USA does not specifically address including such information in a child welfare agency database; instead it contemplates that the disclosure would be made to an agency representative who is legally able to access the child's case plan. Arguably, if the child welfare agency database is structured such that only persons who have a right to access a child's case plan are able to access the child's education records, the disclosure is permissible under the USA.

With respect to purpose #2 – research

The USA on its face does not specifically address disclosure to a child welfare agency for research purposes, so it is unclear whether such data sharing would be allowed under the USA.

The child welfare agency may be able to apply another exception to FERPA's parental authorization rule to obtain education records for research purposes. School officials may release education records in response to a court order or subpoena. In this case, the child welfare agency can request that the courts include in their individual dependency case orders language ordering the state and/or local education agency to release that child's education records to the child welfare agency for research purposes. Usually, under FERPA, before releasing records in response to a court order, the school must make a "reasonable effort" to notify the parent. It is important to note, however, that under the USA amendment to FERPA, a school can release education records to any party listed on a court order issued in a child welfare case, such as the child welfare agency or caseworker, caretaker, children's attorney, or court appointed special advocate. Under FERPA as recently amended, schools do not need to provide notice to parents prior to the release of records pursuant to the court order exception when the parents are parties to the child welfare case and, therefore, already are on notice that the school records will be shared.

Also, if the research was modified so that its purpose included "developing, validating, or administering predictive tests, administering student aid programs and improving instruction," then the research could fall under the "studies" exception to FERPA. 20 U.S.C § 1232g(b)(1)(F).