

6 THINGS TO KNOW ABOUT PRIVACY, FERPA, AND HOMELESSNESS



This fact sheet briefly explains what educational information pertaining to homeless students can be shared, with whom, and under what circumstances, consistent with the Family Educational Rights and Privacy Act (FERPA) and the McKinney-Vento Act. More detailed information can be found in a longer document [here](#).

1. FERPA protects the privacy of student education records.

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.[i] Students and families may avoid sharing information about their homelessness if they fear the information will be shared with other school staff or outside agencies. 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.[ii]

- Disclosing students' homelessness makes their personal information public and can expose them to stigma. It also can put their safety at risk, particularly in situations of domestic violence.
- Relatedly, schools cannot disclose information about students' homelessness, including that they may be staying with other people in violation of lease terms or occupancy limits, to landlords, public housing agencies, or law enforcement.
- "By-Name" Lists [iii] 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. 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. Schools are cautioned against requesting permission to share By-Name Lists of McKinney-Vento students, due to the likelihood that sharing such information will lead families and students to hide their homelessness from the school, as well as potential stigma and other negative consequences.

4. Under FERPA, “privacy” generally means that schools must have specific, written consent to release any information from a student's education record.[v]

There are 16 exceptions to the requirement for written consent to release records. The most relevant exceptions for students experiencing homelessness include releases to a school (including post-secondary) where a student seeks to enroll or has transferred, and releases in connection with financial aid applications. [vi] More information about the exceptions can be found [here](#). Interagency agreements or MOUs cannot supersede FERPA's consent requirements.

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.

To avoid 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. In addition, schools should consult parents/students prior to sharing this sensitive, personal information. Some schools choose to share knowledge of a student's housing situation with a limited, core group of school staff that includes only the homeless education liaison, school counselor/social worker, and classroom teacher. If a need to discuss student concerns with other staff arises, support can be provided 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. [vii]
- Providing unaccompanied youth access to their own records is an important strategy to remove barriers to enrollment and retention. It allows unaccompanied youth to share their 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.
- FERPA also gives rights to “an individual acting as a parent in the absence of a parent or a guardian,” although again, those rights cannot supersede the rights of parents. [viii]
- Once students turn 18 years old, all FERPA rights transfer to them.

[i] 42 USC §11432(g)(1)(I).

[ii] 42 USC §11432(g)(3)(G).

[iii] A By-Name List is a list of people experiencing homelessness that may include the person's name, demographics, history, and housing needs.

[iv] 34 CFR §99.30

[v] 34 CFR §99.30.

[vi] 34 CFR §99.31.

[vii] 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*.

[viii] 34 CFR §§99.3; 99.4.