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May 24, 2013

Dear Colleagues:

The enactment of the Uninterrupted Scholars Act (Public Law 112-278) on January 14, 2013 has provided a unique opportunity for further collaboration between federal, state, and local education and welfare agencies. The Act amended the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g; 34 CFR Part 99, to permit educational agencies and institutions to disclose a student's education records, without parental consent, to a case worker or other representative of a state or local child welfare agency or tribal organization authorized to access a student's case plan "when such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student." In certain types of judicial proceedings that involve the parent, the Act also allows educational agencies and institutions to disclose a student's educational records pursuant to a court order without requiring additional notice to the parent by the educational agency or institution.

Representatives of the Kentucky Department of Education and the Department of Community Based Services (DCBS), with input from the Kentucky School Boards Association, have been working together to plan the effective and uniform implementation of the Act. Each agency is aware of and understands the importance of protecting the privacy of education records without jeopardizing the ability to fully serve the educational needs of students in foster care.

An Educational Passport, a form provided by the caseworker, will be used to streamline the disclosure of records. DCBS workers will provide local school districts with proof that the agency has legal custody or is otherwise legally responsible for the care and protection of the child for whom records are sought. The Kentucky School Boards Association has prepared a form that districts may use to document disclosures made under the Act.

Federal guidance on the Act is forthcoming, but some interim observations are appropriate. The Act does not exclude or make exception for special education records. In addition to the Act, Kentucky regulation provides that parents may grant authority in writing for a foster parent to make educational decisions on the child's behalf. Parents may document this granting of authority using DCBS Form DPP-330. The Act does not grant access to educational records to welfare agencies that are not legally responsible for the care and protection of the student. Recent Kentucky legislation, HB 54, eliminates

the FERPA parental consent requirement for release of education records to officials performing their duties and requiring education records pursuant to KRS Chapter 600-645. Finally, please note that, under 707 KAR 3:220(4) (7), there is a mandatory waiver of fees for the school records of a pupil who qualifies for free or reduced price lunches, and a student in foster care qualifies for free lunches.

We look forward to continuing to work together, at the state and local levels, to improve the educational outcomes of some of Kentucky's most vulnerable students.

Sincerely,



Terry Holliday, Ph.D.
Commissioner
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