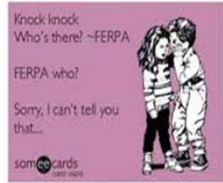


Special Education Student Records, Custody, Residency, and Homeless Students

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FERPA Updates



FERPA Overview

- The Family Educational Rights and Privacy Act (FERPA) is a federal law enacted in 1974 to protect the privacy of student educational records.
- FERPA applies to all educational agencies or institutions receiving funds from the U.S. Department of Education.
 - All public school districts must comply with FERPA and protect the privacy of student educational records.

FERPA Overview

- Administrators should care about FERPA because while there is no private cause of action (parents cannot sue a school under FERPA), school officials can be held liable under Section 1983 for violating a student's constitutional right to privacy.
 - FERPA violations could result in loss of federal funding.

Education records are...

- Education records are all files, documents, and other materials containing information directly related to a student; **and**
- Maintained by the education agency or institution, or by a person acting for such agency or institution.

Examples...

- Surveillance videos
- Disciplinary records
- Psychological tests
- Health records
- Special education records
- Report cards
- Home/school communication logs

Surveillance Videos and FERPA

- Are surveillance videos an educational record?
- FPCO's position has seesawed over the years.
- Most recent guidance.
 - When video surveillance captures a student committing an act such as getting into a fight or breaking into a locker and student discipline is at issue, the parent of any child directly involved in the fight who is facing discipline as a result could view the video.

Surveillance Videos and FERPA

- If more than one student is involved in an altercation, the video is the education record of each student involved in the altercation.
 - Since a video cannot be easily redacted, the video may be **viewed** by any parent whose child was involved in the altercation and who is facing discipline.
- If the school district uses the video to find witnesses to a student altercation or event and the student is named or used as a witness, the video is the witnessing student's education record.
 - Treat it as you would a witness statement.

Civil Rights Laws and FERPA *Letter to Soukup (FPCO 2/9/15)*

- Resolves potential clash between FERPA's confidentiality rule and Title IX notice requirement
- FERPA generally prohibits disclosure of student's personally identifiable information without parental consent, but Title IX's discrimination complaint procedures require notification to the victim's family of the consequences taken against the perpetrator that relate to victim

- FPCO determined an exception to FERPA exists in the case of unlawful discriminatory harassment
- FPCO clarified that it did not interpret FERPA as prohibiting districts from complying with the notice outcome provisions of Title IX
- Disciplinary action that directly relates to the harassed victim include: orders prohibiting harasser from contact with victim, harasser's removal from school, or transfer to another class
- FPCO also stated that any conflict between FERPA and other civil rights laws, the latter override conflicting provisions in the former

Health/Safety Issues and FERPA
Letter to Anonymous (FPCO 5/8/15)

- District disclosure of student's threat assessment to police and area schools did not violate FERPA
- FERPA provides an exception to its general rules when disclosure could protect the health or safety of the student or other individuals
- Here, the district conducted a threat assessment and determined the student presented a high level of risk

- Parent filed a complaint alleging the student's personally identifiable information was disclosed without consent
- FPCO responded that, under the circumstances, the district could disclose the student's information to anyone whose knowledge of such information is necessary to protect the health or safety of the student or other individuals
- As long as the district had a rational basis for its determination, based on the information it had at the time, FPCO would not substitute its judgement for that of the district

Accidental Disclosure and FERPA

Letter to Tobias (FPCO 5/8/15)

- FPCO stated that a district's failure to shield educational records from unlawful disclosure *could* violate FERPA
- The district wrote to FPCO after a high school guidance counselor inadvertently disclosed a spreadsheet containing personally identifiable information of every graduating student in an email to numerous parents (apparently no parents filed a complaint at that time)

- FPCO encouraged districts to review ED's *Recommendation for Safeguarding Student Records* (2008) which addresses protection of electronic data
- It stated districts should implement multiple security and safety procedures
- Districts should also consider the types of resources available, the context and type of research to be protected, and the security measures used by other institutions

- The greater the harm resulting from unauthorized access, the sensitivity of the information protected, and the greater the likelihood that a data breach or inadvertent disclosure could occur, the greater the level of protection a district should consider
- While all incidents cannot be prevented, should a breach or disclosure occur, districts should determine what data was compromised, notify all affected students, determine how the incident occurred, and adopt measures to prevent similar incidents in the future

Step-Parents and Education Records

- A step-parent has the same rights under FERPA as a natural parent where the step-parent is present on a day-to-day basis with the natural parent and child, and the other natural parent is absent from the home.
Letter to Parent re: Disclosure of Records to Step-parents (August 20, 2004)
- These rights are subject to any court order or legal document restricting such rights even if the step-parent is present with the child on a day-to-day basis
 - This would include if the step-parents spouse refuses access to records

Custody



Legal Custody R.C. 2151.011(A)(21)

- A legal status giving the custodian the right to have physical care and control of the child and to determine where and with whom the child will live, and the right and duty to protect, train and discipline the child and to provide the child with food, shelter, education, and medical care
- Legal custody can only be established through court order or decree
- A verbal agreement, letter from an attorney, or notarized affidavit (except for Grandparent Caretaker) is insufficient
- If "permanent," parental rights are terminated
- If "temporary," custody is subject to residual parental rights

- In the absence of a court order mandating a contrary result, custodial and non-custodial parents are entitled to the same access rights to their children during the school day. The non-custodial parent may:
 - Conference with a child’s teachers
 - Attend IEP meetings
 - Chaperone field trips
 - Eat lunch with the student
 - Attend athletic events, concerts, plays, etc.

Guardianship R.C. 2151.011(A)(18)

- A guardian is a person, association, or corporation that is granted authority by a probate court to exercise parental rights over the child to the extent provided in the court’s order and subject to any residual rights of the child’s parents
- Also know as “temporary legal custody”




- For purposes of school attendance in the district where the child is residing, the probate court must vest the guardian with:
 - The right to have physical care and control of the child
 - The right to determine where and with whom the child will live; and
 - The right and duty to protect, train and discipline the child

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• For purposes of tuition:

- The person, association, corporation, or government agency obtaining custody (temporary or permanent) as a guardian does not become the parent for purposes of tuition
- The obligation to pay tuition is set forth in R.C.3313.64 and generally falls upon the school district where the natural/adoptive parents reside/resided



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Residency R.C. 3313.64

- “Parent” means either parent except in cases of separation or divorce in which case “parent” means the residential parent and legal custodian
- General rule is that a child is admitted to the schools of the district where his/her parent resides
- A child not residing in the district where his/her parent resides shall be admitted to the schools of the district in which the child resides if in the legal or permanent custody of a government agency or a person other than the child’s natural or adoptive parent

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Divorce R.C. 3109.04

- In any divorce, legal separation, or annulment proceeding and any proceeding pertaining to the allocation of parental rights and responsibilities, the court shall allocate the parental rights and responsibilities for the care of the minor children of the marriage

Court has discretion to:

- Issue a shared parenting order allocating rights and responsibilities to both parents in accordance with the shared parenting plan submitted to the court. R.C. 3109.04
 - If necessary for the purpose of receiving public assistance, the court will designate which parent’s residence will serve as the child’s home.
- Allocate parental rights and responsibilities to one parent, designate that parent as the residential parent and legal custodian of the child, and divide the other rights and responsibilities
- Commit the child to a relative and designate neither parent the residential parent and legal custodian of the child, or certify of copy of its findings and the record to the juvenile court for further proceedings

Shared Parenting Order

- If the order designates both mom and dad as the residential parent, then the child could attend school free in the district where either parent resides
- This attendance right can only be created by court order and not through affidavits or other notarized statements, except in specific situations under the Grandparent Caretaker Law R.C. 3109.51 et seq.

Special Provisions

- While shared divorce decrees and shared parenting plans generally follow the forms provided by the court, they may contain additional provisions which school must be familiar with. For example:
 - *Mother shall immediately add Father’s brother [], and Father’s mother [] to any and all pickup lists maintained by any of [child’s] schools or daycare providers.*



- The administrator receiving the parenting order must ensure that all appropriate staff are informed about the provisions in the order and are immediately alerted of any changes

Notice to the School

- Whenever a court issues an order or decree allocating parental rights and responsibilities and designating a residential parent and legal custodian of the child, including a temporary order, the residential parent must notify child's school of those allocations by providing the person in charge of admission with a certified copy of the order or decree. R.C. 3313.672(B)(1).

Grandparent Caretaker Law R.C. 3109.52

- Allows the parent, guardian or custodian of a child to create a power of attorney that gives the **grandparent with whom the child is residing** any rights of the parent, guardian or custodian regarding the care, physical custody, and control of the child, including the ability to enroll the child in school, and make educational and medical decisions for the child
 - Does not apply to other relatives
 - Must be filed in court to be valid

Student Records

- In Ohio, the non-residential parent shall have access to student records under the same terms and conditions provided to the residential parent
 - unless Court order or divorce decree say otherwise
- Any order issued by the court, whether a shared parenting order or an order for sole custody, should incorporate or attach an order relating to student records
 - If the order is silent, both parents have equal

Student Records

- The domestic relations divisions of county courts of common pleas have adopted rules pertaining to shared parenting and parenting time guidelines
- In Cuyahoga County, it is Rule 18
- Under Rule 18(C)(8), if the non-residential parent will not have access to records under the same terms and conditions as the residential parent, a court order must specify the terms and condition that apply to the non-residential parent

Student Records and Activities

(From Sample Order)

- *Excepting as specifically modified or otherwise limited by court order, both parents are entitled to access any educational record that is related to the child under the same terms and conditions as the other parent, and to which the parent is legally provided access.*
- *Excepting as specifically modified or otherwise limited by court order, and subject to ORC §3319.321(F), both parents are entitled to access any student activity that is related to the child under the same terms and conditions as the other parent, and to which the parent is legally provided access.*

Student Records – FERPA

- FERPA gives full rights to either parent (custodial/non-custodial, residential/non-residential) unless the school district is provided with evidence of a court order, State statute, or legally binding document that specifically revokes these rights. 34 C.F.R. §99.4
- FERPA defines “parent” as a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian. 34 C.F.R. §99.3

Step-Parents

- A stepparent has the same rights under FERPA as a natural parent where the stepparent is present on a day-to-day basis with the natural parent and child, and the other natural parent is absent from the home. *Letter to Parent re: Disclosure of Records to Stepparents* (August 20, 2004)
- These rights, however, are subject to any court order or legal document restricting such rights even if the stepparent is present with the child on a day-to-day basis
 - This would include if the step-parents spouse refuses access to records



Residency



Whether a child can be admitted to the schools of a particular district and tuition responsibility generally depends on the residency of the parent(s) or the child

Proving Residency R.C. 3314.11

- “The school district in which the child or parent resides is the location the parent or student has established as the primary residence and where substantial family activity takes place”



- The following can serve as evidence of primary residence:

- A deed, mortgage, lease, current home owner’s or renter’s insurance declaration page, or current real property tax bill
- Utility bill or receipt of utility installation issued within 90 days of enrollment
- A paycheck or paystub issued to the parent or student within 90 days of enrollment that includes the address of primary residence

- Most current available bank statement issued to the parent or student that includes the address of primary residence
- Any other official document issued to the parent or student that includes the address of primary residence, i.e. driver’s license, state ID, voter registration

Tuition R.C. 3313.64

- A child 5 to 22 years of age and any preschool child with a disability shall be admitted, **tuition free**, to the school district where the child’s parent resides
 - “Parent” means either the natural or adoptive parent unless the parents are separated, divorced or the marriage is dissolved, in which case “parent” means the residential parent and/or legal custodian

- In a shared parenting plan, both parents may be legal custodians but the child can only attend school tuition-free in the district indicated by the plan
- If the parents are still married, or were never married, but live in different districts, the child may attend school in either district tuition-free



- A district must admit a child residing within the district, even if the child is not residing with the child's parents if:
 - The child is in the legal or permanent custody of a government agency or person other than the child's parent
 - The child resides in a "home" licensed to care for residential children, or
 - The child requires special education. R.C. 3313.64(B)(2).
- There are specific rules governing the payment of tuition in these circumstances



Special Circumstances

Students **must** be admitted to the district tuition-free in the following situations:

- Child's parents have signed a contract to buy or build a house in the district



- A shared parenting agreement designating both parents as the residential parent
- A child under the age of 18 who is married and resides in the district
- Students who are illegal aliens or homeless



- Child with a medical condition that may require emergency care, if the child's parent works in the district
- Students between the ages of 18 and 22 who:
 - Support themselves by their own labor
 - Live apart from their parents
 - Reside in the district; and
 - Have not successfully completed the requirement in their IEP

- Child is living with a resident of the district while the parent is serving in the armed forces outside Ohio
- Child is living with a parent under the care of a shelter or program for domestic violence located in the district
- Students admitted under the district's open enrollment policy

Residency Disputes



- In the event of a disagreement, the superintendent of public instruction determines the district in which the student's parent resides. R.C. 3313.64(K)
- Disputes can arise between districts over which one pays tuition and between districts and parents over whether the student actually resides in the district
- Either the district or parent can submit a complaint to ODE; very informal procedure



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- ODE will ask district to allow student to continue attending until dispute is resolved, but the decision remains with the district
- Both sides then have 30 days to submit information supporting their case
- Documentation
 - Deeds, leases, bills, voter registration, driver's license, vehicle registration, other public records
 - Property owner reports (from county auditor)
 - Certified mailings
- District investigation
 - Get evidence on both the address at which the parent claims to reside and the address where the district believes the parent actually resides

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- Witnesses/Affidavits
 - Property owners/landlords
 - SRO/truancy officer/other district personnel who observed both residences
 - Neighbors

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- There is no timeline for ODE to make a decision on residency disputes



- So if a district complies with ODE's request to allow continued attendance, it could end up educating a student for several months who does not properly belong in that district
- That district would then seek tuition reimbursement from the district ultimately responsible for the student's education

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HOMELESS STUDENTS

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Challenges faces by homeless students

- At least 20% of homeless students do not attend school
- Within a year, 41% of homeless children will attend 2 different schools; 28% will attend 3 or more different schools
- With each change in schools, a student is set back academically an average of 4-6 months
- Homeless students often feel like outsiders and have trouble maintaining friendships; they often experience anxiety and depression
- Homeless student often lack basic school supplies and a reasonable environment to complete homework
- Unaccompanied youth often confront these challenges without the support and guidance of a caring adult

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Role of Schools

- In a life filled with uncertainty, school may be a homeless student's only place of safety and stability
- Simply being provided with a desk or a locker can provide the student with a sense of ownership and control
- Given the importance of education in the daily routine and overall well-being of homeless youth, the federal government passed legislation aimed at ensuring these children have the opportunity to enroll and succeed in school

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Federal and State Laws

- “McKinney-Vento Homeless Assistance Act”
 - 42 U.S.C. §11431 et seq
- Ohio Revised Code 3313.64(F)(13)
 - “All school districts shall comply with the McKinney-Vento Homeless Assistance Act . . .”
- Purpose is “equal access” to the same free, appropriate public education (FAPE) as other children
 - Eliminate barriers to full participation
- Prohibition on segregation

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Law In a Nutshell . . .

- Separate schools prohibited
- Stigmatizing practices prohibited
- Districts must designate liaison officers
- Homeless students must be enrolled immediately in school of choice; including during pendency of any dispute on placement
- Transportation must be provided upon request to school of origin, even if in another school district

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Homeless students face significant barriers in trying to enroll, remain, and be successful in school, including:

- Enrollment requirements (school records, health records, proof of residence and guardianship)
- High mobility resulting in a lack of school stability and educational continuity
- Lack of transportation
- Lack of school supplies, clothing, etc.
- Poor health, fatigue, hunger, anxiety/trauma
- Invisibility (lack of awareness)
- Prejudice and misunderstanding

“Homeless Children and Youth”

- Children and youth who lack a fixed, regular and adequate nighttime residence
- This includes:
 - Sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (“doubled up”)
 - This includes shared family housing due to loss of housing or economic hardship
 - This includes a child sent to live with relatives because his/her parents cannot afford safe, stable housing
 - This does **not** include parents sending their child to relatives because they want their child to go to another school
 - This does **not** include incarcerated students

- Living in motels, hotels, trailer parks or camping grounds due to lack of alternative, adequate accommodations;
- Living in emergency or transitional shelters;
- Abandoned in hospitals;
- Awaiting foster care placement; children already in foster care are not homeless





- Children and youth who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- Children who temporarily move to live with relatives because their parent is hospitalized for illness or surgery



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- Children and youth who are living in cars, parks, public spaces, abandoned buildings, bus or train stations, or similar settings;
- Children who have been displaced because of natural disasters, **on a case by case basis**; and
- Migratory children who qualify as homeless because they are living in the circumstances described above

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“Unaccompanied Youth”


- Children not in the physical custody of a parent or guardian for a variety of reasons
- Includes children who ran away from home, been thrown out of their homes, or been abandoned
- Living in runaway shelters, abandoned buildings, care, on the streets or other inadequate housing, and children denied housing by their families

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“Unaccompanied Youth”

- Over 50% of these children report being physically abused at home; over one-third report sexual abuse; and two-thirds report that at least one parent abuses drugs or alcohol
- The term also includes school-age unwed mothers, living in homes for unwed mothers, who have no other housing available



“Unaccompanied Youth”

- The term would likely not include children who have reached the age of majority and are living on their own in an apartment but are still entitled to attend school
 - This situation meets the Act’s definition of “fixed, regular and adequate nighttime residence”
- Whether a child is considered “homeless” or an unaccompanied youth is a case-by-case determination
 - Determination is not made based upon income

How many students are homeless?*

School Level	Number of Homeless children enrolled in public school (total for LEAs with and without subgrants)
K-5	9988
6-8	3991
9-12	5125
Total	19103

*Number of homeless children enrolled in Ohio public school during the 2009-2010 school year

Federal Civil Rights

School districts, as recipients of Federal financial assistance, must ensure that their education programs for homeless students are administered in a non-discriminatory manner.

But what does non-discrimination entail?



Prohibition Against Segregation

- School districts must adopt policies and practices that ensure homeless students are not segregated or stigmatized based on homelessness
- If a state receives funds under McKinney-Vento, every district in that state – regardless of whether it receives a subgrant from the state– is prohibited from segregating homeless students in separate programs or separate schools

Prohibition Against Segregation

- Homeless students must be educated as part of the school's regular academic program and have access to all related services, including transportation
 - Cannot educate them off-site in shelters
- Exception
 - May be segregated for short periods of time for health and safety emergencies; or
 - To provide temporary, special, and supplementary services to meet the unique needs of homeless children

Domestic Violence Shelters

- Children currently residing in a domestic violence shelter must be educated within the regular school program and not offsite.
 - Transitional classrooms in shelters while children are being assessed or while awaiting records are not permitted
- Districts must take all other necessary steps to protect children who are victims of domestic violence.
 - Protecting the child's identity in school database systems.
 - Arranging for anonymous pick-up and drop-off locations for school buses.
 - Enrolling children in a different school.
 - Sensitizing bus drivers and school staff to the child's circumstances.
 - Training staff on confidentiality laws, and
 - Helping families file copies of protective orders with schools.

Local Liaisons

- Every District, regardless of whether it receives a McKinney-Vento subgrant, must designate a local liaison for homeless children
- The liaison serves as one of the primary contacts between homeless families and school staff, district personnel, shelter workers, and other service providers
- Liaison determines the student is homeless
- If you suspect a student is homeless, contact the district liaison or building administrator

Local Liaison

Local liaisons must ensure that:

- Homeless children are identified by school personnel
- Homeless children are enrolled and have equal opportunity to succeed
- Homeless children and their families receive educational services for which they are eligible
- Parents/guardians are informed of available educational and related opportunities for their children, and are provided with meaningful opportunities to participate in their children's education




Local Liaison

- Parents/guardians and unaccompanied youth are fully informed of all transportation services and are assisted in accessing these services
- Enrollment disputes are mediated in accordance with requirements of the McKinney-Vento Act
 - If in doubt, enroll and then the liaison can sort out
- Public notice of the educational rights of homeless students is disseminated to the location where they receive services under the Act

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Possible Signs of Homelessness:



- Attendance at several schools
- More than one family at same address
- Attention-seeking behavior
- Hunger and hoarding of food
- Poor hygiene and grooming
- Sleeping in class
- Inappropriate dress for weather

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Possible Signs of Homelessness:

- Erratic attendance; numerous absences
- Inability to contact parents
- Lack of participation in field trips
- Lack of preparation for school; missing assignments
- Extreme shyness
- Poor self-esteem
- Protective of parents
- Developmental delays
- Difficulty trusting people

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Possible signs of homelessness

Common statements used by homeless children:

- *We've moved a lot.*
- *Our address is new. I can't remember it.*
- *We're staying with relatives/friends while looking for a place.*
- *We're going through a bad time right now.*

District staff, especially enrollment personnel, should be trained to look for these signs

Transportation

- Transportation to and from the school of origin must be provided upon request even if it crosses district lines
 - This is true even if a district does not provide transportation services to non-homeless students
- If the child continues to live in the area where the school of origin is located, that district must provide transportation to and from the school of origin



Transportation

- If the child continues his education in the school of origin while living in an area served by another district, the original district and current district must agree upon a method to apportion the responsibility and cost of transportation to and from the school of origin.
 - If the Districts cannot agree, the responsibility and cost will be shared equally
- To meet transportation obligations, districts can also reimburse parents and students for providing transportation, or provide access to public transportation



Privacy Issues

- If a family or student does not want anyone to know their living arrangements, FERPA requires school districts to keep this information private
- If permission is not given to distribute the information, including directory information, schools cannot give out any information except to persons involved in the student's education as specified in the statute
- Accordingly, school cannot call landlords, housing agencies, employers to learn more information about a student's living arrangements or family income if the conversation would reveal information from student records

Special Services

- **School meal programs**

- Homeless students automatically qualify for free breakfast and lunch at school that offer meals as part of the federal program
- Families do not have to fill out an application or provide proof of income. Liaisons or administrators just provide cafeteria personnel with a list of students receiving meals



Title I

- Federal law providing schools with money to educate disadvantaged students, e.g. tutoring services
- Homeless students must get Title I services no matter where they go to school and districts must set aside money to ensure homeless students get services

- Title I funds can be used to provide:

- Items of clothing, particularly if necessary to meet school dress or uniform requirements
- Clothes and shoes for gym class
- Student fees for participation in the general education program including AP, IB, and SAT/ACT testing
- School supplies such as backpacks, notebooks, and pencils
- Immunizations
- Birth certificates
- Medical services including dental and vision
- Counseling services
- Extended learning time (weekends, before and after school)

School Sports

- Homeless students are exempt from residency and attendance rules for participating in school sports or other extracurricular activities
- Fees for participation should be waived or paid with district funds or donations
- The US Supreme Court determined that high school athletic associations are considered part of the state and must also comply with McKinney-Vento requirements to eliminate barriers to school participation by exempting students from participation rules they cannot meet due to homelessness

Miscellaneous FAQs

- Is there a limit on the duration of homelessness?
– No. Duration of homelessness may last years
- Can distance learning courses be “schools of origin”?
– Yes.
- Must homeless siblings be placed in the same schools?
– No. E.g. Older sibling may be better able to handle longer commute
- If the school of choice is at capacity, what happens?
– The District must offer the student options comparable to those offered to other students

Miscellaneous FAQs

- Can a homeless student be denied extra-curricular participation if s/he cannot pay fees for extra-curricular costs?
– No, those fees must be waived.
- Can absences caused by homelessness be counted against student?
– No.
- Can residency and attendance guidelines for participating in school sports be enforced for homeless students ?
– No, homeless students should be exempted from residency and attendance schools for participating in school sports

Miscellaneous FAQs

- Are illegal immigrant students living in a homeless situation covered by the Act?
 - Homeless immigrant students are covered by the Act, regardless of whether they are in the U.S. legally
- Can a GED program be considered a school of origin?
 - Yes.
- Can homeless students be required to document income before receiving free meals?
 - No.

QUESTIONS



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