



Forum Guide to Planning for, Collecting, and Managing Data About Students Displaced by a Crisis

Understanding Relevant Federal Laws

This document provides an overview of five important federal laws that affect displaced students. All information was obtained from the cited websites. Many states and localities have adopted similar laws, regulations, and policies. Agencies should proactively review and understand the implications of all applicable federal, state, and local legislation.

Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g) is a federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education (ED).

FERPA gives parents certain rights with respect to their children's education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are known as "eligible students."

- Parents or eligible students have the right to inspect and review the student's education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
 - school officials with legitimate educational interest;
 - other schools to which a student is transferring;
 - specified officials for audit or evaluation purposes;
 - appropriate parties in connection with financial aid to a student;
 - organizations conducting certain studies for or on behalf of the school;
 - accrediting organizations;
 - to comply with a judicial order or lawfully issued subpoena;
 - appropriate officials in cases of health and safety emergencies; and
 - state and local authorities, within a juvenile justice system, pursuant to specific state law.

Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose

directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a parent-teacher association [PTA] bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For more information ...

- Visit <https://ed.gov/policy/gen/guid/fpco/ferpa/index.html> to learn more about FERPA.
- Visit <https://studentprivacy.ed.gov/> to learn more about student privacy issues and federal laws relating to the privacy of students' education records.
- Visit <https://studentprivacy.ed.gov/resources/ferpa-and-disclosure-student-information-related-emergencies-and-disasters> to learn more about FERPA and the disclosure of student information related to emergencies and disasters.

McKinney-Vento Homeless Education Assistance Improvements Act of 2001

The McKinney-Vento Act (P.L. 107-110) is designed to address the challenges that homeless children and youths have faced in enrolling, attending, and succeeding in school. Under the McKinney-Vento Act, state education agencies (SEAs) must ensure that each homeless child and youth has equal access to the same free, appropriate public education, including a public preschool education, as other children and youths. Homeless children and youths must have access to the educational and related services that they need to enable them to meet the same challenging state academic standards to which all students are held. In addition, homeless students may not be separated from the mainstream school environment. SEAs and local education agencies (LEAs) are required to review and undertake steps to revise laws, regulations, practices, or policies that may act as barriers to the identification, enrollment, attendance, or success in school of homeless children and youths.

The McKinney-Vento Act strongly emphasizes the importance of school stability for homeless children and youths. Changing schools multiple times significantly impedes a student's academic and social growth. The research on highly mobile students, including homeless students, indicates that a student can lose academic progress with each school change. Highly mobile students have also been found to have lower test scores and worse overall academic performance than peers who do not change schools frequently. Therefore, the McKinney-Vento Act calls for LEAs to maintain students in their school of origin to promote school stability and greater educational outcomes overall, unless it is not in the student's best interest.

The following is the policy of the Congress:

- (1) Each state educational agency shall ensure that each child of a homeless individual and each homeless youth has equal access to the same free, appropriate public education, including a public preschool education, as provided to other children and youths.
- (2) In any state where compulsory residency requirements or other requirements, in laws, regulations, practices, or policies, may act as a barrier to the identification of, or the enrollment, attendance, or success in school of, homeless children and youths, the state educational agency and local educational agencies in the state will review and undertake steps to revise such laws, regulations, practices, or policies to ensure that homeless children

and youths are afforded the same free, appropriate public education as provided to other children and youths.

(3) Homelessness is not sufficient reason to separate students from the mainstream school environment.

(4) Homeless children and youths should have access to the education and other services that such children and youths need to ensure that such children and youths have an opportunity to meet the same challenging state academic standards to which all students are held.

The term “homeless children and youths”–

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes–

(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;

(ii) children and youths 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 (within the meaning of section 11302(a)(2)(C) 1 of this title);

(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

(iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

For more information ...

- Visit <https://ed.gov/policy/elsec/leg/esea02/pg116.html> to learn more about the McKinney-Vento Act.
- Visit <https://www2.ed.gov/programs/homeless/index.html> to learn more about education for homeless children and youths grants for state and local activities.
- Visit <https://nche.ed.gov/disaster-preparation-and-response/> to learn more about how the McKinney-Vento Act applies to and can assist displaced students and their families.
- Visit <https://nche.ed.gov/wp-content/uploads/2018/11/data-guide-17-18.pdf> to learn more about collecting and reporting data on homeless children and youths to ED.

Health Insurance Portability and Accountability Act

Congress enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, to, among other things, improve the efficiency and effectiveness of the health care system through the establishment of national standards and requirements for electronic health care transactions and to protect the privacy and security of individually identifiable health information. Collectively, these are known as HIPAA’s Administrative Simplification provisions, and the U.S. Department of Health and Human Services (HHS) has issued a suite of rules, including a privacy

rule, to implement these provisions. Entities subject to the HIPAA Administrative Simplification Rules (see 45 CFR Parts 160, 162, and 164), known as “covered entities,” are health plans, health care clearinghouses, and health care providers that transmit health information in electronic form in connection with covered transactions. See 45 CFR § 160.103. “Health care providers” include institutional providers of health or medical services, such as hospitals, as well as noninstitutional providers, such as physicians, dentists, and other practitioners, along with any other person or organization that furnishes, bills, or is paid for health care in the normal course of business. Covered transactions are those for which HHS has adopted a standard, such as health care claims submitted to a health plan. See 45 CFR § 160.103 (definitions of “health care provider” and “transaction”) and 45 CFR Part 162, Subparts K-R.

The HIPAA Privacy Rule requires covered entities to protect individuals’ health records and other identifiable health information by requiring appropriate safeguards to protect privacy, and setting limits and conditions on the uses and disclosures that may be made of such information without patient authorization. The rule also gives patients’ rights over their health information, including rights to examine and obtain a copy of their health records, and to request corrections.

For more information ...

- Visit <https://www.hhs.gov/hipaa/index.html> to learn more about HIPAA.
- Visit <https://studentprivacy.ed.gov/resources/joint-guidance-application-ferpa-and-hipaa-student-health-records> to learn more about the relationship between FERPA and HIPAA and how these two laws apply to student records.

Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288, as amended, 42 U.S.C. § 5121 et seq., and Related Authorities

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) was signed into law on November 23, 1988; it amended the Disaster Relief Act of 1974 (P.L. 93-288). The Stafford Act constitutes the statutory authority for most Federal disaster response activities especially as they pertain to the Federal Emergency Management Agency (FEMA) and FEMA programs.

The Stafford Act intends to provide an orderly and continuing means of assistance by the federal government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from disasters, specifically by

- (1) revising and broadening the scope of existing disaster relief programs;
- (2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;
- (3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;
- (4) encouraging individuals, states, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;
- (5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations; and
- (6) providing federal assistance programs for both public and private losses sustained in disasters.

On October 5, 2018, the president signed the Disaster Recovery Reform Act of 2018 into law as part of the Federal Aviation Administration Reauthorization Act of 2018. These reforms acknowledge the shared responsibility of disaster response and recovery, aim to reduce the complexity of FEMA, and build the nation’s capacity for the next catastrophic event. The law amends the Stafford Act and contains more than 50 provisions that require FEMA policy or regulation changes for full implementation.

For more information ...

- Visit <https://www.fema.gov/robert-t-stafford-disaster-relief-and-emergency-assistance-act-public-law-93-288-amended> to learn more about the Stafford Act.
- Visit <https://www.fema.gov/disaster-recovery-reform-act-2018> to learn more about the status of FEMA’s implementation of the Disaster Recovery Reform Act of 2018.

ED’s Temporary Emergency Impact Aid for Displaced Students

The Temporary Emergency Impact Aid for Displaced Students (EIA) program provides funds to assist with the cost of educating public and nonpublic students displaced by a major disaster or emergency. Under the EIA program, ED awards grants to eligible SEAs to enable them to make emergency impact aid payments to eligible LEAs and eligible Bureau of Indian Education-funded schools to assist with the cost of educating displaced students who are served by those agencies. Under the 2019 EIA program, ED will award grants to eligible applicants for costs incurred during the 2018-2019 school year as a result of educating public and non-public school students displaced by Hurricanes Florence and Michael, Typhoon Mangkhut, Super Typhoon Yutu, and wildfires, earthquakes, and volcanic eruptions occurring in calendar year 2018 and tornadoes and floods occurring in calendar year 2019 in those areas for which a major disaster or emergency is declared under section 401 or 501 of the Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. 5170 and 5190). The EIA program is authorized in Division B, Subdivision 1, Title VIII of P.L. 116-20 “Additional Supplemental Appropriations for Disaster Relief Act of 2019”. Current information on the EIA program is available on the ED website at <https://www2.ed.gov/programs/eia/index.html>.

For more information ...

- Visit <https://www2.ed.gov/programs/eia/index.html> to learn more about the EIA program.
- Visit <https://www2.ed.gov/programs/eia/faq.html> for answers to frequently asked questions about the EIA program.
- Visit <https://www.ed.gov/hurricane> to learn more about the continuation of critical services to students, families, and educators and the restoration of the learning environment after a hurricane.