



North Carolina Department of Health and Human Services  
Division of Social Services

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June 1, 2013

**DEAR COUNTY DIRECTORS OF SOCIAL SERVICES**

**ATTENTION: CHILD WELFARE STAFF AND ATTORNEYS**

**SUBJECT: FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)**

The North Carolina Division of Social Services would like to inform you of recent federal legislation that impacts how child welfare staff obtain information about children from local school systems. The Uninterrupted Scholars Act (<http://www.gpo.gov/fdsys/pkg/BILLS-112s3472enr/pdf/BILLS-112s3472enr.pdf>) amends FERPA, the Family Educational Rights and Privacy Act, and became effective January 14, 2013. The Act creates exceptions to make it easier for schools to release information including attendance records, IEP records, grades, and exceptional children (EC) records. While the Uninterrupted Scholars Act was meant to make it easier to gain information about children in foster care, it may have the unintended consequence of making it more difficult to obtain information about children during the Assessment and In Home phase of the case.

Currently, some child welfare staff are using G.S. § 7B-302(e) ([http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_7B/GS\\_7B-302.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_7B/GS_7B-302.html)) in order to obtain information or records about children from public schools and other agencies. Commonly, this is referred to as a "Demand Letter". Due to the fact that FERPA is a Federal Act, their guidelines outweigh those of state statute.

When a local child welfare agency has legal responsibility for the care of a child (or, in other words, the child is in custody), then it is not necessary to obtain Parental Consent to gain access to educational records. All educational records are available to the Department through the Uninterrupted Scholars Act.

If the child is not in the agency's custody, there are other ways that you can obtain the information.

1. Have a parent or legal guardian sign a Consent for Release of Confidential Information (DSS-5297) or;
2. If there is a current action before the court (such as mandatory In-Home Services, child custody, 50-B, etc) obtain a court order or issue a subpoena or;
3. File an Obstruction Petition with the Court;
4. Utilize the "Health & Safety Emergency" clause that is discussed below.

Please see the flow chart below for easy reference:

Child Welfare Services

[www.ncdhhs.gov](http://www.ncdhhs.gov) • [www.ncdhhs.gov/dss](http://www.ncdhhs.gov/dss)

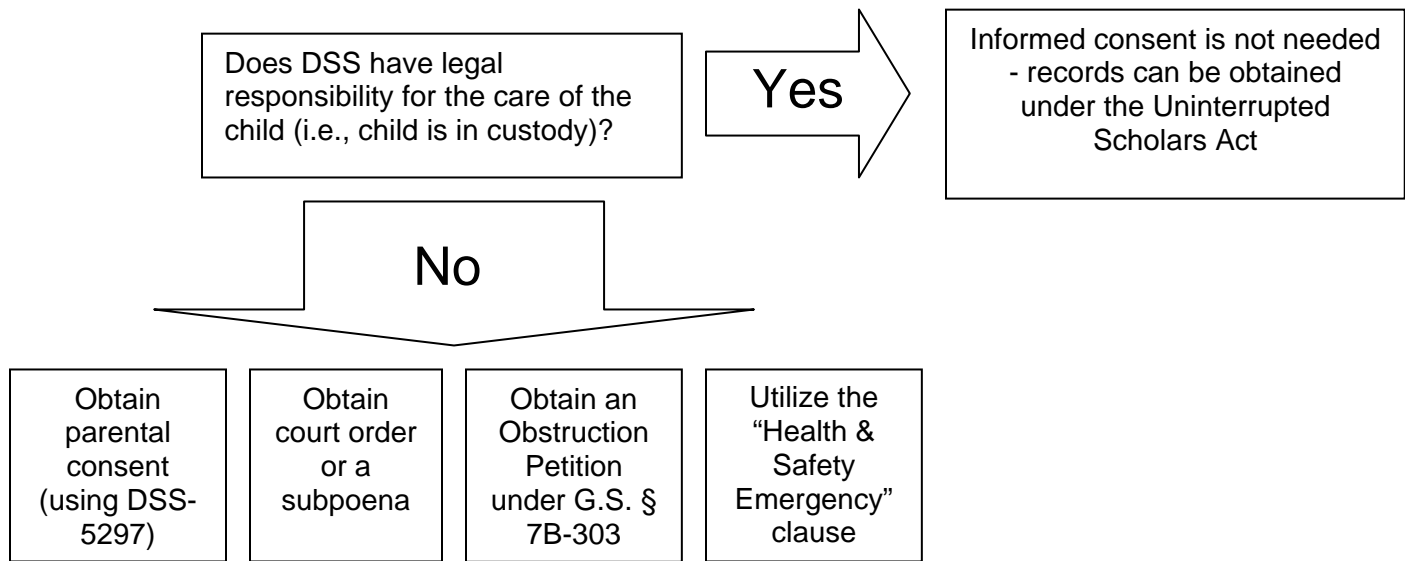
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Persuant to FERPA, schools may release educational records if there is a “health or safety emergency” for the child. The statute that allows access to the confidential records in the case of a health or safety emergency can be found in the Code of Federal Regulations: 34 CFR, part 99.36 (<http://www.gpo.gov/fdsys/pkg/CFR-2010-title34-vol1/xml/CFR-2010-title34-vol1-sec99-36.xml>).

The Division is currently working on updating the Consent for Release of Confidential Information form (DSS-5297)(<http://info.dhhs.state.nc.us/olm/forms/dss/dss-5297-ia.pdf>). The new form will contain a specific section for a parent/caregiver to consent to the release of educational records. Until that time, please fill in educational records in the “other” section of the category list.

If you have questions or concerns about this information, please contact Antonia Zimmer at 919-334-1113 or [antonia.zimmer@dhhs.nc.gov](mailto:antonia.zimmer@dhhs.nc.gov).

Sincerely,

Kevin Kelley, Section Chief  
Child Welfare Services

cc: Jack Rogers  
Hank Bowers  
Child Welfare Team Leaders