

**State of Florida
Department of Children and Families**

Rick Scott
Governor

David E. Wilkins
Secretary

April 26, 2011

Ms. Ellen Campbell, Acting Director
Family Policy Compliance Office
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-8520

Dear Ms. Campbell:

The Florida Department of Children and Families, (DCF) which is Florida's child welfare/foster care agency and the Florida Department of Education have been working together to improve the education of Florida's children in the foster care system. To maximize the services provided to children in the foster care system, and as required by state law, section 39.0016, Florida Statutes, both departments wish to share child-specific information with one another through an interagency agreement, within the requirements of FERPA.

Question: Are Florida's child welfare case managers included within the definition of "parent" under FERPA, for purposes of disclosure of personally identifiable information from students' education records, when the student is in the legal custody of the Department of Children and Families?

Background: When a child is in a shelter or foster care, but prior to termination of parental rights, the parents retain certain rights, but the legal custody of the child is with DCF.

DCF licenses both family foster parents and group homes, which provide the physical care for the foster child. DCF contracts with Community-Based Care (CBC) agencies to provide supervision of the child, oversight of the child's physical custody, including the provision of services to the child, and interaction with the court. The CBCs' case managers are responsible for ensuring the health, safety and well-being of these children, which includes the responsibility to ensure that they are being properly educated. DCF retains ultimate responsibility for the actions of everyone in the child welfare system.

Relevant Definitions:

Under FERPA, "parent" means "a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian." 20 U.S.C.1232g

Under Florida's education statute, "parent" means "either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent." This definition includes foster parents. Section 1000.21(5), F.S.

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

Ms. Ellen Campbell, Acting Director
April 26, 2011
Page Two

Florida's child protective statute, s. 39.0016(b), F.S., defines "Department" as "the Department of Children and Family Services or a community-based care lead agency acting on behalf of the Department of Children and Family Services, as appropriate."

Context of other federal laws concerning the education of foster children. Both departments acknowledge that Title IV-E of the Social Security Act requires child welfare agencies to maintain certain education and other information as part of their child welfare records and to share certain records with care providers. This includes the child's grade-level performance, the child's school records, and any other relevant health and education information concerning the child as determined appropriate by the state child welfare agency. (See 42 U.S.C. 675(1)(C). See also 42 U.S.C. 675(5)(D) and 42 U.S.C. 1320a-2a).

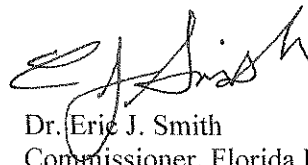
Both departments understand that other federal laws, including IDEA, as well as Florida state laws, prohibit the case manager from functioning as the child's educational decision-maker. DCF is not asking to be the sole entity to whom records are released, but rather to have DCF case managers treated as one of the child's parents, in much the same way as both natural parents of a child are entitled to their child's educational records, even when they are divorced, in the absence of any court order restricting this.

To answer any additional questions you may have in responding to this request, please contact Carolyn Horwich, Assistant General Counsel, Florida Department of Education, at (850) 245-0442 or Carolyn.Horwich@fldoe.org.

Sincerely,



David E. Wilkins
Secretary



Dr. Eric J. Smith
Commissioner, Florida Department of Education