



AOC Briefing

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SHARING EDUCATION INFORMATION FOR CHILDREN IN FOSTER CARE



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

Introduction

Children in foster care are frequently at risk of having their education interrupted or delayed, and having education decisions made for them based on incomplete information.

When children are in foster care, the child welfare agency and the child's caregiver often have problems obtaining important information about the educational needs of children in their care. In addition, when foster children change schools the new school often does not receive the child's records in a timely manner and the children often do not receive the same educational services that they were receiving in their former school. These education records contain essential information about the child's academic performance, educational history, progress and special needs.

Title IV-E of the Social Security Act (42 U.S.C. §670 et. seq.) requires child welfare agencies to maintain health and education records for children in foster care including the name of education providers, the child's grade level performance, the child's school records, and any other relevant education information found to be appropriate by the Department of Social Services.

The recent adoption of the federal Fostering Connections Act requires that California include a plan for ensuring the educational stability of the child while in foster care. This includes a plan for the exchange of school records when immediate enrollment of the youth is needed.

Removing unnecessary barriers to the sharing of education information for foster children is a priority of California's Child Welfare Council and Blue Ribbon Commission on Children in Foster Care. To assist in the discussion about removing barriers to information sharing, the Administrative Office of the Courts has prepared this overview of laws related to sharing education information. This overview is not intended to be an exhaustive legal analysis of all legal issues related to sharing education information concerning foster children. It is intended to provide the basis for further discussions about identifying and removing legal barriers that prevent foster children from getting the education they deserve and child welfare services and the juvenile courts from obtaining all the information they need to make informed education decisions for foster children.

The federal Family Educational Rights and Privacy Act (FERPA) protect privacy rights regarding education records.

The Family Educational Rights and Privacy Act (FERPA) is a federal law that controls access to education records. The purpose of FERPA is to ensure access to educational records for students and parents while protecting the privacy of such records from disclosure to unauthorized individuals and entities. FERPA generally prohibits the disclosure of personally identifiable information from a student's educational records without the written consent of a parent or guardian or the consent of a student over the age of 18 or attending a post secondary program. FERPA allows for disclosure without consent in limited circumstances as described in C.F.R. 99.31.

FERPA regulations define parent as “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 guardian.” (34 C.F.R. section 99.3.)

FERPA defines education records as written records, files, documents, or other materials that contain information directly related to a student and are maintained by an educational agency or institution, or a person acting for such agency or institution. (20 U.S.C. § 1232g (a) (4) (A).)

FERPA and state law restrict the disclosure of written education records - any item of information directly related to child, other than directory information, which is maintained by a school district. (20 U.S.C. § 1232g (b) (2), 34 C.F.R. 99.30, Education Code § 49060 et seq.)

FERPA permits the release of "directory information" relating to a student. “Directory information “can include a student's identifying information, such as name, address and telephone number, date and place of birth, information about fields of study and student activities and the name of the most recent school that the student attended. Before releasing directory information the education agency must provide public notice of the information included in “directory information” and give parents a reasonable period of time to object to the release of the information concerning their child. (20 U.S.C. §1232g (a) (5) (B).)

The right to obtain and authorize the release of protected education information regarding foster youth.

Parents or guardians typically have the right to obtain educational records concerning their minor children and to consent to the release of educational information. They also have the right to attend education meetings concerning their child and to request and approve of services. Parents and guardians maintain these rights when a child comes before the juvenile court.

When children are in foster care, the juvenile court may limit a parent or guardian’s educational rights and appoint a responsible adult to serve as an educational representative to hold these rights. If the child is a child with a disability as defined in special education law, the court may directly appoint a responsible adult, known as a surrogate parent or refer the child to the local education agency for appointment of a surrogate parent. Where the child before the court has not yet been identified as a child with a disability, but is suspected of needing special education services, the court may, with input of interested persons, make educational decisions for the child. A parent’s educational rights transfer to the appointed educational representative or surrogate parent. (20 U.S.C. § 1401(23), 34 C.F.R. §300.30, Education Code §56028, Welfare and Institutions Code §§ 361, 726, Cal. Rules of Court, rule 5.650.)

FERPA allows specified information to be released without written consent in some circumstances.

FERPA allows the schools to provide education information without the consent of the parent, guardian or educational representative if the information is furnished in compliance with a judicial order, or pursuant to any lawfully issued subpoena, upon condition those parents and the students are notified of all such orders or subpoenas before information is released. To conform with FERPA requirements that the information provided to the court not be released to others, the court can make an order directing all parties who receive the information through the dependency court reports and attachments to avoid revealing data to any other persons and to destroy data when it is no longer needed. (20 U.S.C. §1232g (b) (2) (B), Education Code §49077.) The federal Department of Education has issued a policy advisory letter which states that courts cannot use “blanket orders” to grant child welfare agencies access to education records. The court must issue individual orders for each case in order to comply with this advisory letter.

FERPA permits disclosure of otherwise confidential information without consent or a court order in certain circumstances including: to teachers and school district officials “with a legitimate educational interest; to officials of another school where the student seeks to enroll, including post-enrollment; to state and local juvenile justice systems or their authorities if allowed or required under state law; and to appropriate parties in a health or safety emergency where necessary to protect the health and safety of the student or other individuals (34 C.F.R. § 99.31.)

State law allows schools to release education records to the child welfare agency in some circumstances.

In addition to FERPA, there are state laws that address the exchange of education information. Where the state law directly conflicts with FERPA, the state law is preempted by FERPA.

As does FERPA, state law allows the release of education information pursuant to a waiver signed by a parent, guardian or other person designated by the court. However, California law allows the disclosure of education records in other situations.

Under state law, a county placing agency (county social services or county probation department) may access a pupil's records for the purpose of fulfilling the requirements of the health and education summary required pursuant to Section 16010 of the Welfare and Institutions Code. In addition, the county placing agency may access these records for the purpose of fulfilling educational case management responsibilities required by the juvenile court or by law. The county placing agency may also access these records to assist with the school transfer or enrollment of a pupil without parental consent or a court order. (Education Code §49076(a) (11.) California Rule of Court 5.651 requires extensive review of education records by social worker and probation officer and Welfare and Institutions Code section 706.6 requires attachment of education records to the social study. This exception to the general requirement that a parent or guardian must authorize the release a student's individual education information allows California to comply with state plan requirements of title IV-E of the Social Security Act (42 U.S.C. §670 et. seq.)

State law allows school districts, county offices of education and county placing agencies to develop cooperative agreements to facilitate exchange of student information by email or other electronic exchange. (Education Code §49076(a) (11).)

California law also permits foster family agencies to access grades and transcripts as well as any individualized education plans (IEP) for students under their care. (Education Code § 49069.3.)

Some of these state laws appear to conflict with FERPA. In order to allow states to implement effectively and efficiently the Title IV-E requirements that child welfare agencies obtain and maintain the education records of children in foster care, California may wish to seek clarification from the United States Department of Education regarding how it can comply with Title IV-E and FERPA at the same time.

Some counties are successfully exchanging information regarding children in foster care.

San Diego County has worked out a protocol for the automated exchange of data between the education agency, the child welfare agency and the courts under Education Code §49076(a) (11). Fresno County is currently working on a similar arrangement.

In at least one county the education agency is limiting the release of information to those cases in which there is parental consent or the court has issued an order for the education agency to release the information.

Conclusion

While the lack of technology and the internal policies and procedures of school districts and child welfare agencies frequently prevent the exchange of education information about foster children at the state and local level, the legal framework to allow this exchange currently exists. While stakeholders need a clear understanding of the protections of confidential education information as required by law, certain education information for foster children can be shared among courts, the schools and the child welfare agency. The child welfare agency is required to include this information in reports filed with the juvenile court.

Title IV-E requires case plans in all foster care cases. These case plans must include the health and education records of the child including the name of education providers, the child's grade level performance, the child's school record and any other relevant education information found to be appropriate by the Department of Social Services. (42 U.S.C. § 675(1) (C).) California must comply with the federal state plan requirements in order to receive federal funding for child welfare services and the foster care program.

In the absence of specific FERPA disclosure requirements, some education agencies are reluctant to release information to the child welfare agency and the juvenile court without parental consent or a court order. They are concerned by the lack of an explicit exception in FERPA for the release of education records to the child welfare agency. Although some education agencies have apparently found the authorization for schools to release information to child welfare agencies to be implicit in order to implement state law and harmonize the two federal statutes, some school districts will not release information without a court order or parental consent to the child welfare agencies.

Requiring parental consent or a court order is a significant barrier to developing automated data exchanges concerning foster children among the schools, child welfare agencies, and the courts. It requires that employees of the schools and the child welfare agency review each case individually to determine that the required consent or court order has been received in each individual case before the information is exchanged.

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