



AOC Briefing

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SHARING INFORMATION ABOUT CHILDREN IN FOSTER CARE

Education Information

A summary of issues faced
by child welfare agencies,
juvenile courts, and educators



ADMINISTRATIVE OFFICE
OF THE COURTS

CENTER FOR FAMILIES, CHILDREN
& THE COURTS

AOC Briefing

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INTRODUCTION

Children in foster care frequently experience an interruption or delay in their education because education decisions made for them may be based on incomplete information. These issues arise because, when children in foster care change schools, the child welfare agency, the children's caregivers, and the new school often do not have timely access to their educational records, which contain essential information about academic performance, educational history, progress, and special needs. When records are delayed, children in foster care often do not receive the same educational services that they were receiving in their former schools.

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 names 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. In addition, the federal Fostering Connections to Success and Increasing Adoptions Act adopted in 2008 requires that each state include a plan for ensuring the educational stability of the child while he or she is in foster care. This includes a plan for the child welfare agency to ensure that all education records are sent from the prior school to the new school.

Removing unnecessary barriers to sharing education information about children in foster care is a priority of the California Child Welfare Council and the Judicial Council's Blue Ribbon Commission on Children in Foster Care. The Administrative Office of the Courts has prepared this overview of laws related to the sharing of education information. The overview is not intended to be an exhaustive analysis of all legal issues related to sharing education information concerning children in foster care; it is intended to provide a basis for further discussions about identifying and removing legal barriers that prevent children in foster care 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 children in foster care.

This brief addresses disclosure of education information held by schools and education officials. It does not address disclosure of education records held in court or child welfare agency files.

The federal Family Educational Rights and Privacy Act protects privacy rights regarding education records.

The federal Family Educational Rights and Privacy Act (FERPA) controls access to education records. Its purpose 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 written consent from a parent, a guardian, or a student who is over the age of 18 or attending a postsecondary program. FERPA allows for disclosure without consent in limited circumstances as described in 34 Code of Federal Regulations part 99.31 (2009).

- 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. § 99.3 (2009).)
- 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, an 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 a child, other than directory information, that is maintained by a school district. (20 U.S.C. § 1232g(b)(2); 34 C.F.R. § 99.30 (2009); Ed. Code, § 49060 et seq.)
- FERPA permits the release, without consent, 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).)

Parents, guardians, and educational representatives generally have the right to obtain and authorize the release of protected education information regarding children in foster care.

- Parents and guardians typically have the right to obtain educational records concerning their minor children and to consent to the release of education 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 a child is in foster care, the juvenile court may limit the parent’s or guardian’s educational rights and appoint a responsible adult to serve as an educational representative. The parent’s educational rights transfer to the appointed educational representative. 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. The parent’s educational rights transfer to the appointed surrogate parent. If 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. (20 U.S.C. § 1401(23); 34 C.F.R. § 300.30 (2009); Ed. Code, § 56028; Welf. & Inst. 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 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, on the condition that the parent and the student are notified of all such orders or subpoenas before the information is released. The U.S. Department of Education has issued a policy advisory letter stating 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. Under FERPA and California law, schools must make a reasonable effort to inform parents that education information will be disclosed pursuant to a court order. (34 C.F.R. § 99.31(a)(9) (2009); Ed. Code, § 49077.)

- FERPA permits disclosure of otherwise confidential information without consent or a court order in certain circumstances including the following: to teachers and school district officials with a legitimate educational interest; to officials of another school where the student seeks to enroll, including postsecondary 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 (2009).)

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

- In addition to FERPA, state laws address the exchange of education information. Where the state law conflicts with FERPA, FERPA preempts state law. (See Ed. Code, § 49060.)
- As does FERPA, state law allows the release of education information pursuant to a waiver signed by a parent, a guardian, or another person designated by the court. However, California law goes beyond FERPA in specifying access to education records in other situations.
- Under state law, a county placing agency (county child welfare agency or county probation department) may access a student's records for the purpose of fulfilling the requirements of the health and education summary required pursuant to Welfare and Institutions Code section 16010. 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 student without parental consent or a court order. (Ed. Code, § 49076(a)(11).) Rule 5.651 of the California Rules of Court requires extensive review of education records by a social worker and a 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 of 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 e-mail or other electronic exchange. (Ed. Code, § 49076(a)(11).)

- California law also permits foster family agencies to access grades and transcripts as well as any individualized education plans (IEPs) for students under their care. (Ed. Code, § 49069.3.)
- Since FERPA preempts state law, it is important to make sure that FERPA requirements are followed, even when more detailed state law provisions exist and may appear to conflict with FERPA. In order to allow states to effectively and efficiently implement 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 U.S. Department of Education regarding how it can comply with title IV-E and FERPA at the same time.

Two counties in California currently exchange information regarding children in foster care.

- San Diego County has developed a protocol for the automated exchange of data between the education agency, the child welfare agency, and the courts under Education Code section 49076(a)(11). Fresno County has a similar arrangement.
- In at least one California 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

Lack of technology as well as the internal policies and procedures of school districts and child welfare agencies frequently prevent the exchange of education information about children in foster care. This occurs at both the state and local levels. However, the legal framework to allow such exchange currently exists. While stakeholders need a clear understanding of the protections of confidential education information required by law, certain education information for children in foster care 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 names of education providers, the child's grade-level performance, the child's school record, and any other relevant education information that the Department of Social Services finds to be appropriate. (42 U.S.C.A. § 675(1)(C).) California must comply with the federal and 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, concerned about the lack of an explicit exception in FERPA, will not release information to the child welfare agency and the juvenile court without parental consent or a court order. 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 to the child welfare agencies without a court order or parental consent.

Requiring parental consent or a court order is a significant barrier to developing automated data exchanges 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. These and other barriers to education information sharing must be identified and addressed to further the goal of providing appropriate educational services for children in foster care.

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SHARING INFORMATION ABOUT CHILDREN IN FOSTER CARE

Four briefing papers addressing confidentiality and information sharing about children in foster care

- Health Care Information
- Mental Health Care Information
- Substance Abuse Treatment Information
- Education Information



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